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LAND TITLES IN CALIFORNIA.

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REPORT

ON THE SUBJECT OF

LAND TITLES IN CALIFORNIA,

MADE IN PURSUANCE OF INSTRUCTIONS FROM THE

Secretary of State and the Secretary of the Interior.

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GIDEON & Co., Printers, Ninth street, Washington.



LAND TITLES IN CALIFORNIA.

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# REPORT

ON THE SUBJECT OF

# LAND TITLES IN CALIFORNIA,

MADE IN PURSUANCE OF INSTRUCTIONS FROM THE

Secretary of State and the Secretary of the Interior,

BY WILLIAM CAREY JONES:

TOGETHER WITH A TRANSLATION OF THE

PRINCIPAL LAWS ON THAT SUBJECT,

AND SOME OTHER PAPERS RELATING THERETO.

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WASHINGTON:

GIDEON & CO., PRINTERS,  
1850.



# REPORT

ON

## LAND TITLES IN CALIFORNIA.

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TO THE SECRETARY OF THE INTERIOR:

SIR : On the 12th July last, I received a letter of that date from the Department of State, informing me that I had been appointed a “ confidential agent of the Government, to proceed to Mexico and California, for the purpose of procuring information as to the condition of Land Titles in California ;” and at the same time, your letter of instructions, and a letter from the Commissioner of the Land office.

Pursuant to these, I left this city on the 14th of the same month, and embarked from New York on the 17th, on board the steamship *Empire City*, for Chagres. Arriving at that place on the 29th, I proceeded immediately to Panama, under the expectation of shortly obtaining a passage to California. The first opportunity, however, was by the steamship *Oregon* the 29th of August. I arrived at Monterey, the then capital of California, and where the territorial archives were deposited, on the 19th of September. I afterward visited the towns San José, the present capital, and San Francisco, and returned to Monterey. I also made arrangements for going by land, so as to visit the principal places on the way, from Monterey to Los Angeles, and thence to San Diego. The early setting in of the rainy season rendered this journey impracticable ; and on the 16th of November I left Monterey on the steamship *Panama*, and went by sea to San Diego. Thence, I went by land to Los Angeles ; and on the 3d of December returned to San Diego, in order to embark on the steamer which was at that time expected from San Francisco. I embarked from San Diego on the 7th of December, on the steamship *Unicorn*, and landed the 18th of the same month at Acapulco, in Mexico. I proceeded thence as rapidly as possible to the city of Mexico, where I arrived on the 24th. On the 11th of January I left that city, and on the 18th of the same month embarked from Vera Cruz for Mobile, and thence arrived in this city on the 1st of February. I have been prevented from making my report until the present time, by the unexpected detention of the papers and memoranda which I collected in California, and which I could not, without inconvenience and delay, and some hazard of their loss, bring with me through Mexico, and therefore procured to be brought by way of the isthmus of Panama.

On arriving in California, my attention was immediately directed to the subjects embraced in your letter of instructions.

I. "TO THE MODE OF CREATING TITLES TO LAND, FROM THE FIRST INCEPTION TO THE PERFECT TITLE, AS PRACTISED BY MEXICO, WITHIN THE PROVINCE OF CALIFORNIA."

All the grants of land made in California (except pueblo or village lots, and except, perhaps, some grants north of the bay of San Francisco, as will be hereafter noticed) subsequent to the independence of Mexico, and after the establishment of that government in California, were made by the different political governors. The great majority of them were made subsequent to January, 1832, and consequently under the Mexican Colonization Law of 18th August, 1824, and the government regulations, adopted in pursuance of the law, dated 21st November, 1828. In January, 1832, General José Figueroa became Governor of the then territory of California, under a commission from the Government at Mexico, replacing Victoria, who, after having the year before, displaced Echandrea, was himself driven out by a revolution. The installation of Figueroa restored quiet, after ten years of civil commotion, and was at a time when Mexico was making vigorous efforts to reduce and populate her distant territories, and consequently granting lands on a liberal scale. In the act of 1824, a league square (being  $4,428\frac{4}{10}\frac{2}{10}$  acres) is the smallest measurement of rural property spoken of; and of these leagues square, eleven (or nearly 50,000 acres) might be conceded in a grant to one individual. By this law, the *States* composing the federation, were authorized to make special provision for colonization within their respective limits, and the colonization of the *territories*, "conformably to the principles of the law" charged upon the Central Government. California was of the latter description, being designated a Territory in the *Acta Constitutiva* of the Mexican Federation, adopted 31st January, 1824, and by the Constitution, adopted 4th October of the same year.\* The colonization of California, and granting of lands therein, was, therefore, subsequent to the law of 18th August, 1824, under the direction and control of the Central Government. That government, as already stated, gave regulations for the same, 21st November, 1828.

The directions were very simple. They gave the governors of the territories the exclusive faculty of making grants, within the terms of the law—that is, to the extent of eleven leagues, or *sitios*, to individuals; and colonization grants, (more properly, *contracts*)—that is, grants of larger tracts to *empresarios*, or persons who should undertake, for a consideration in land, to bring families to the country for the purpose of colonization. Grants of the first description; that is, to families or single persons, and not exceeding eleven *sitios*, were "not to be held definitively valid," until sanctioned by the *Territorial Deputation*. Those of the second class, that is, *empresario* or colonization

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\* The political condition of California was changed by the Constitution of 29th December, and act for the division of the Republic into Departments, of the 30th December, 1836. The two Californias then became a *Department*, the confederation being broken up, and the States reduced to Departments. The same colonization system, however, seems to have continued in California.

grants (or contracts) required a like sanction by the *Supreme Government*. In case the concurrence of the Deputation was refused to a grant of the first mentioned class, the governor should appeal, in favor of the grantee, from the assembly to the Supreme Government.

The "*first inception*" of the claim, pursuant to the regulations, and as practised in California, was a petition to the Governor, praying for the grant, specifying usually the quantity of land asked, and designating its position, with some descriptive object or boundary, and also stating the age, country, and vocation of the petitioner. Sometimes, also, (generally, at the commencement of this system,) a rude *map* or *plan* of the required grant, showing its shape, and position with reference to other tracts, or to natural objects, was presented with the petition. This practice, however, was gradually disused, and few of the grants made in late years have any other than a verbal description.

The next step was usually a reference of the petition, made on the margin, by the governor, to the prefect of the district, or other near local officer, where the land petitioned for was situate, to know if it was vacant, and could be granted without injury to third persons or the public, and sometimes to know if the petitioners' account of himself was true. The reply (*informe*) of the prefect, or other officer, was written upon or attached to the petition, and the whole returned to the governor. The reply being satisfactory, the governor then issued the grant in form. On its receipt, or before, (often before the petition even,) the party went into possession. It was not unfrequent, of late years, to omit the formality of sending the petition to the local authorities, and it was never requisite, if the governor already possessed the necessary information concerning the land and the parties. In that case the grant followed immediately on the petition. Again, it sometimes happened that the reply of the local authority was not explicit, or that third persons intervened, and the grant was thus for some time delayed. With these qualifications, and covering the great majority of cases, the practice may be said to have been: 1. The petition; 2. The reference to the prefect or alcalde; 3. His report, or *informe*; 4. The grant from the governor.

" *When filed, and how, and by whom recorded?*"

The *originals* of the petition and *informe*, and any other preliminary papers in the case, were filed, by the secretary, in the government archives, and with them a *copy* (the original being delivered to the grantee) of the grant: the whole attached together so as to form one document (entitled, collectively, an *expediente*.) During the governorship of Figueroa, and some of his successors, that is, from 22d May, 1833, to 9th May, 1836, the grants were likewise *recorded* in a book kept for that purpose (as prescribed in the "regulations" above referred to) in the archives. Subsequent to that time, there was no *record*, but a brief memorandum of the grant: the *expediente*, however, still filed. Grants were also sometimes registered in the office of the prefect of the district where the lands lay; but the practice was not constant, nor the record generally in a permanent form.



The next, and final, step in the title, was the approval of the grant by the Territorial Deputation (that is, the local legislature, afterward, when the territory was created into a Department, called the "Departmental Assembly.") For this purpose, it was the governor's office to communicate the fact of the grant, and all information concerning it, to the assembly. It was here referred to a committee (sometimes called a committee on vacant lands, sometimes on agriculture,) who reported at a subsequent sitting. The approval was seldom refused; but there are many instances where the governor omitted to communicate the grant to the assembly, and it consequently remained unacted on. The approval of the assembly obtained, it was usual for the secretary to deliver to the grantee, on application, a certificate of the fact; but no other record or registration of it was kept than the written proceedings of the assembly. There are, no doubt, instances, therefore, where the approval was in fact obtained, but a certificate not applied for, and as the journals of the assembly, now remaining in the archives, are very imperfect, it can hardly be doubted that many grants have received the approval of the assembly, and no record of the fact now exists. Many grants were passed upon and approved by the assembly in the winter and spring of 1846, as I discovered by loose memoranda, apparently made by the clerk of the assembly for future entry, and referring to the grants by their numbers—sometimes a dozen or more, on a single small piece of paper; but of which I could find no other record.

*"So, also, with the subsequent steps, embracing the proceedings as to survey, up to the perfecting of the title?"*

There were not, as far as I could learn, any regular surveys made of grants in California, up to the time of the cessation of the former government. There was no public or authorized surveyor in the country. The grants usually contained a direction that the grantee should receive judicial possession of the land "from the proper magistrate (usually the nearest alcalde) in virtue of the grant," and that the boundaries of the tract should then be designated by that functionary with "suitable-land marks." But this injunction was usually complied with, only by procuring the attendance of the magistrate, to give judicial possession according to the verbal description contained in the grant. Some of the old grants have been subsequently surveyed, as I was informed, by a surveyor under appointment of Col. Mason, acting as governor of California. I did not see any official record of such surveys, or understand that there was any. The "*perfecting of the title*" I suppose to have been accomplished when the grant received the concurrence of the assembly; all provisions of the law, and of the colonization regulations of the supreme government, pre-requisites to the title being "definitively valid," having been then fulfilled. These, I think, must be counted *complete titles*.

*"And if there be any more books, files, or archives of any kind whatsoever, showing the nature, character and extent of these grants?"*

The following list comprises the books of record and memoranda of grants, which I found existing in the Government archives at Monterey:

1. "1828. Cuaderno del registro de los sitios, fierras, y señales que posean los habitantes del territorio de la Nueva California."—(Book of registration of the farms, brands, and marks [for marking cattle] possessed by the inhabitants of the territory of New California.)

This book contains information of the situation, boundaries, and appurtenances of several of the missions, as hereafter noticed; of two pueblos, San José and Branciforte, and the records of about twenty grants, made by various Spanish, Mexican, and local authorities, at different times, between 1784 and 1825, and two dated in 1829. This book appears to have been arranged upon information obtained in an endeavor of the Government to procure a registration of all the occupied lands of the territory.

2. Book marked "*Titulos*."

This book contains records of grants, numbered from 1 to 108, of various dates, from 22d May, 1833, to 9th May, 1836, by the successive governors, Figueroa, José Castro, Nicholas Gutierrez, and Mariano Chico. A part of these grants (probably all) are included in a file of *expedientes* of grants, hereafter described, marked from No. 1 to No. 579; but the numbers in the book do not correspond with the numbers of the same grants in the *expedientes*.

3. "Libro donde se asciertan los despachos de terrenos adjudicados en los años de 1839 and 1840."—(Book denoting the concessions of land adjudicated in the years 1839 and 1840.)

This book contains a brief entry, by the secretary of the department, of grants, including their numbers, dates, names of the grantees and of the grants, quantity granted, and situation of the land, usually entered in the book in the order they were conceded. This book contains the grants made from 18th January, 1839, to 8th December, 1843, inclusive.

4. A book similar to the above, and containing like entries of grants issued between 8th January, 1844, and 23d December, 1845.

5. File of *expedientes* of grants—that is, all the proceedings (except of the Assembly) relating to the respective grants, secured, those of each grant in a separate parcel, and marked and labelled with its number and name. This file is marked from No. 1 to No. 579 inclusive, and embraces the space of time between 13th May, 1833, to July, 1846. The numbers, however, bear little relation to the dates. Some numbers are missing, of some there are duplicates—that is, two distinct grants with the same number. The *expedientes* are not all complete; in some cases the final grant appears to have been refused; in others it is wanting. The collection, however, is evidently intended to represent estates which have been granted, and it is probable that in many, or most instances, the omission apparent in the archives is supplied by original documents in the hands of the parties, or by long permitted occupation.

These embrace all the record books and files belonging to the territorial, or departmental, archives, which I was able to discover.

I am assured, however, by Mr. J. C. Frémont, that, according to the best of his recollection, a book for the year 1846, corresponding to those above noted, extending from 1839 to the end of 1845, existed in the archives while he was Governor of California, and was with them when he delivered them, in May, 1847, to the officer appointed by General Kearny to receive them from him at Monterey.

II. "CHIEFLY THE LARGE GRANTS, AS THE MISSIONS, AND WHETHER THE TITLE TO THEM BE IN ASSIGNEES, OR WHETHER THEY HAVE REVERTED, AND VESTED IN THE SOVEREIGN?"

I took much pains, both in California and in Mexico, to assure myself of the situation, in a legal and proprietary point of view, of the former great establishments known as the MISSIONS of California. It had been supposed that the lands they occupied were *grants*, held as the property of the church, or of the mission establishments as corporations. Such, however, was not the case. All the missions in Upper California were established under the direction, and mainly at the expense, of the Government, and the missionaries there had never any other rights than to the occupation and use of the lands for the purpose of the missions, and at the pleasure of the Government. This is shown by the history and principles of their foundation, by the laws in relation to them, by the constant practice of the Government toward them, and, in fact, by the rules of the Franciscan order, which forbid its members to possess property.

The establishment of missions in remote provinces was a part of the colonial system of Spain. The Jesuits, by a license from the Viceroy of New Spain, commenced in this manner the reduction of Lower California in the year 1697. They continued in the spiritual charge, and in a considerable degree of the temporal government, of that province until 1767, when the royal decree abolishing the Jesuit order throughout New Spain was there enforced, and the missions taken out of their hands. They had then founded fifteen missions, extending from Cape St. Lucas, nearly to the head of the sea of Cortés, or Californian gulf. Three of the establishments had been suppressed by order of the Viceroy: the remainder were now put in charge of the Franciscan monks of the college of San Fernando, in Mexico, hence sometimes called "*Fernandinos*." The prefect of that college, the Rev. Father Junipero Serra, proceeded in person to his new charge, and arrived, with a number of monks, at Loreto, the capital of the peninsula, the following year, (1768.) He was there, soon after, joined by Don José Galvez, inspector general (*visitador*) of New Spain, who brought an order from the King, directing the founding of one or more settlements in Upper California. It was therefore agreed that Father Junipero should extend the mission establishments into Upper California, under the protection of *presidios* (armed posts) which the government would establish at San Diego and Monterey. Two expeditions, both accom-

panied by missionaries, were consequently fitted out, one to proceed by sea the other by land, to the new territory. In June, 1769, they had arrived, and in that month founded the first mission, about two leagues from the port of San Diego. A *presidio* was established, at the same time, near the port. The same year, a *presidio* was established at Monterey, and a mission establishment begun. Subsequently, the Dominican friars obtained leave from the King to take charge of a part of the missions of California, which led to an arrangement between the two societies, whereby the missions of Lower California were committed to the Dominicans, and the entire field of the Upper Province remained to the Franciscans. This arrangement was sanctioned by the political authority, and continues to the present time. The new establishments flourished, and rapidly augmented their numbers, occupying first the space between San Diego and Monterey, and subsequently extending to the northward. A report from the Viceroy to the King, dated at Mexico, 27th December, 1793, gives the following account of the number, time of establishment, and locality of the Missions existing in New California at that time:

MISSIONS.	Situation.	When founded.
1. San Diego de Alcala,	lat. 32° 42'	16th July, 1769.
2. San Carlos de Monterey,	36 33	3d June, 1170.
3. San Antonio de Padua,	36 34	14th July, 1771.
4. San Gabriel de los Temblores,	34 10	8th Sept., 1771.
5. San Luis Obispo,	31 38	1st Sept., 1772.
6. San Francisco, (Dolores,)	37 56	9th Oct., 1776.
7. San Juan Capistrano,	33 30	1st Nov., 1776.
8. Santa Clara,	37 00	18th Jan., 1777.
9. San Buenaventura,	34 36	31st March, 1782.
10. Santa Barbara,	34 28	4th Oct., 1786.
11. Purisima Conception,	35 32	8th Jan., 1787.
12. Santa Cruz,	36 58	28th Aug., 1791.
13. La Soledad,	36 38	9th Oct., 1791.

At first, the missions nominally occupied the whole territory, except the four small military posts of San Diego, Santa Barbara, Monterey, and San Francisco; that is, the limits of one mission were said to cover the intervening space to the limits of the next; and there were no other occupants except the wild Indians, whose reduction and conversion was the object of the establishments. The Indians, as fast as they were reduced, were trained to labor in the missions, and lived either within its walls, or in small villages near by, under the spiritual and temporal direction of the priests, but the whole under the political control of the governor of the province, who decided contested questions of right or policy, whether between different missions; between missions and individuals, or concerning the Indians. Soon, however, grants of land began to be made to individuals, especially to retired soldiers, who received special favor in the distant colonies of Spain, and became the settlers and founders of the country they had reduced and protected.

Some settlers were also brought from the neighboring provinces of Sonora and Sinaloa, and the towns of *San José*, at the head of the Bay of San Francisco, and of *Los Angeles*, eight leagues from the port of San Pedro, were early founded. The governor exercised the privilege of making concessions of large tracts, and the captains of the presidios were authorized to grant building lots, and small tracts for gardens and farms, within the distance of two leagues from the presidios. By these means, the mission tracts began respectively to have something like known boundaries; though the lands they thus occupied were still not viewed, in any light, as the property of the missionaries, but as the domain of the crown, appropriated to the use of the missions while the state of the country should require it, and at the pleasure of the political authority.

It was the custom throughout New Spain, (and other parts of the Spanish colonies, also,) to secularize, or to subvert, the mission establishments, at the discretion of the ruling political functionary; and this not as an act of arbitrary power, but in the exercise of an acknowledged ownership and authority. The great establishments of Sonora, I have been told, were divided between white settlements and settlements of the Indian pupils, or neophytes of the establishments. In Texas, the missions were broken up, the Indians were dispersed, and the lands have been granted to white settlers. In New Mexico, I am led to suppose, the Indian pupils of the missions, or their descendants, still, in great part, occupy the old establishments; and other parts are occupied by white settlers, in virtue of grants and sales.\* The undisputed exercise of this authority over all the mission establishments, and whatever property was pertinent to them, is certain.

The liability of the missions of Upper California, however, to be thus dealt with, at the pleasure of the Government, does not rest only on the argument to be drawn from this constant and uniform practice. It was inherent in their foundation—a condition of their establishment. A belief has prevailed, and it is so stated in all the works I have examined which treat historically of the missions of that country, that the first act which looked to their secularization, and especially the first act by which any authority was conferred on the local government for that purpose, or over their temporalities, was an act of the Mexican Congress of 17th August, 1833. Such, however, was not the case. Their secularization—their subversion—was looked for in their foundation; and I do not perceive that the local authority (certainly not the supreme authority) has ever been without that lawful jurisdiction over them,

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\* Since writing the above, I have learned from the Hon. Mr. Smith, Delegate from the Territory of New Mexico, that the portion of each of the former mission establishments which has been allotted to the Indians is *one league square*. They hold the land, as a general rule, in community, and on condition of supporting a priest and maintaining divine worship. This portion and these conditions are conformable to the principles of the Spanish laws concerning the allotments of Indian villages. Some interesting particulars of the foundation, progress, and plan of the missions of New Mexico are contained in the report, or information, before quoted, of 1793, from the Viceroy to the King of Spain, and in extracts from it given in the papers accompanying this Report.

unless subsequent to the colonization regulations of 21st November, 1828, which temporarily exempted mission lands from colonization. I quote from a letter of "Instructions to the commandant of the new establishments of San Diego and Monterey," given by Viceroy Bucareli, 17th August, 1773:

"Art. 15. When it shall happen that a mission is to be formed into a pueblo (or village) the commandant will proceed to reduce it to the civil and economical government, which, according to the laws, is observed by other villages of this kingdom; then giving it a name, and declaring for its patron the saint under whose memory and protection the mission was founded." (Cuando llegue el caso de que haya de formarse en el pueblo una mision, procederá el comandante á reducirlo al gobierno civil y economico que observan, segun las leyes, los demas de este reyno; poniendole nombre entonces, y declarandole por su titular el santo bajo cuya memoria y venerable proteccion se fundó la mision.)

The right, then, to remodel these establishments at pleasure, and convert them into towns and villages, subject to the known policy and laws which governed settlements of that description,\* we see was a principle of their foundation. Articles 7 and 10, of the same letter of Instructions, show us also that it was a part of the *plan* of the missions that their condition should be thus changed; that they were regarded only as the nucleus and bases of communities to be thereafter emancipated, acquire proprietary rights, and administer their own affairs; and that it was the duty of the governor to choose their sites, and direct the construction and arrangement of their edifices, with a view to their convenient expansion into towns and cities. And not only was this general revolution of the establishments thus early contemplated and provided for, but mean time the governor had authority to reduce their possessions by grants within and without, and to change their condition by detail. The same series of instructions authorized the governor to grant lands, either in community or individually, to the Indians of the missions, in and about their settlements on the mission lands; and also to make grants to settlements of white persons. The governor was likewise authorized at an early day to make grants to soldiers who should marry Indian women trained in the missions; and the first grant, (and only one I found of record,) under this authorization, was of a tract near the mission edifice of Carmel, near Monterey. The authorization given to the captains of *presidios* to grant lands within two leagues of their posts, expressly restrains them within that distance, so as to leave the territory beyond—though all beyond was nominally attached to one or other of the missions—at the disposition of the superior guardians of the royal property. In brief, every fact, every act of government, and

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\* A revolution more than equal to the modern *secularization*, since the latter only necessarily implies the turning over of the temporal concerns of the mission to secular administration. Their conversion into pueblos would take from the missions all semblance in organization to their originals, and include the reduction of the missionary priests from the heads of great establishments and administrators of large temporalities, to parish curates: a change quite inconsistent with the existence in the priests or the church of any proprietary interest or right over the establishment.

principle of law applicable to the case, which I have met in this investigation, go to show that the missions of Upper California were never, from the first, reckoned other than government establishments, or the founding of them to work any change in the ownership of the soil, which continued in and at the disposal of the crown, or its representatives. This position was also confirmed, if had it needed any confirmation, by the opinions of high legal and official authorities in Mexico. The missions—speaking collectively of priests and pupils—had the *usufruct*; the priests the administration of it; the whole resumable, or otherwise disposable, at the will of the crown or its representatives.

The object of the missions was to aid in the settlement and pacification of the country, and to convert the natives to Christianity. This accomplished, settlements of white people established, and the Indians domiciliated in villages, so as to subject them to the ordinary magistrates, and the spiritual care of the ordinary clergy, the *missionary* labor was considered fulfilled; and the establishment subject to be dissolved or removed. This view of their purposes and destiny fully appears in the tenor of the decree of the Spanish Cortes, of 13th September, 1813.\* The provisions of that act, and the reason given for it, develop in fact the whole theory of the mission establishments. It was passed “in consequence of a complaint by the Bishop elect of Guiana of the evils that afflicted that province, on account of the Indian settlements in charge of missions not being delivered to the ecclesiastical ordinary, though thirty, forty, and fifty years had passed since the reduction and conversion of the Indians.” The Cortes therefore decreed:

1. That all the new *reducciones y doctrinas*, (that is, settlements of Indians newly converted, and not yet formed into parishes,) of the provinces beyond sea, which were in charge of missionary monks, and had been ten years subjected, should be delivered immediately to the respective ecclesiastical ordinaries, (bishops) “without resort to any excuse or pretext, conformably to the laws and cédulas in that respect.”

2. That as well these missions, (*doctrinas*) as all others which should be erected into curacies, should be canonically provided by the said ordinaries, (observing the laws and cédulas of the royal right of patronage,) with fit ministers of the secular clergy.

3. That the missionary monks, relieved from the converted settlements, which should be delivered to the ordinary, should apply themselves to the extension of religion in benefit of the inhabitants of other wilderness parts, proceeding in the exercise of their missions conformably to the directions of paragraph 10, article 335, of the Constitution.†

\* “Collection of Decrees of the Spanish Cortes, reputed in force in Mexico.” Mexico, 1829, p. 106.

† The following is the clause referred to, namely, paragraph 10, art. 335, Constitution of the Spanish monarchy, 1812:

“The provincial councils of the provinces beyond sea shall attend to the order, economy, and progress of the missions for the conversion of infidel Indians, and to the prevention of abuses in that branch of administration. The commissioners of such missions shall render their accounts to them, which accounts they shall in their turn forward to the government.”

This clause of itself settles the character of these establishments, as a branch of the public administration.

6. That the missionary monks should discontinue immediately the government and administration of the property of the Indians, who should choose by means of their *ayuntamientos*, with intervention of the superior political authority, persons among themselves competent to administer it; the lands being distributed and reduced to private ownership, in accordance with the decree of the 4th January, 1813, on reducing vacant and other lands to private property.”\*

It has also been supposed, that the act above alluded to of the Mexican Congress, (act of 17th August, 1833,) was the first assertion by the Mexican government of property in the missions, or that they by that act first became (or came to be considered,) national domain. But this is likewise an error. The Mexican government has always asserted the right of property over all the missions of the country, and I do not think that the supposition has ever been raised in Mexico, that they were the property of the missionaries or the Church.

The General Congress of Mexico, in a decree of 4th August, 1824, concerning the public revenue, declares the estates of the inquisition, as well as all temporalities, to be the property of the nation; (that is, no doubt, in contradistinction from property of the States—making no question of their being public property.) This term would include not only the mission establishments, but all rents, profits, and income the monks received from them. A like act of 7th July, 1831, again embraces the estates of the inquisition and temporalities as national property, and places them with “other rural and suburban estates,” under charge of a director general. The executive regulations for colonizing the territories, may raise an idea of territorial and native property in them, but it puts out of the question any proprietary right in the missionaries.

The 17th article of these regulations, (executive regulations for colonization of the territories, adopted 21st November, 1828,) relates to the missions, and directs that, “In those territories where there are missions, the lands which they occupy shall not at present be colonized, nor until it be determined if they ought to be considered as property of the settlements of the neophyte-catechumens and Mexican settlers.”

The subsequent acts and measures of the general government of Mexico in direct reference to missions, and affecting those of California, are briefly as follows:

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\* “Collection of Decrees of the Spanish Cortes,” &c., p. 56. This decree provides :

1. That “all the vacant or royal lands, and town reservations, (*propios y arbitrios*, lands reserved in and about towns and cities for the municipal revenue,) both in the Peninsula and islands adjacent, and in the provinces beyond sea, except such commons as may be necessary for the villages, shall be converted into private property; provided, that in regard to town reservations, some annual rents shall be reserved.

2. That “in whatever mode these lands were distributed, it should be in full and exclusive ownership, so that their owners may enclose them, (without prejudice of paths, crossings, watering-places, and servitudes,) to enjoy them freely and exclusively, and destine them to such use or cultivation as they may be best adapted to; but without the owners ever being able to entail them, or to transfer them, at any time or by any title, in *mortmain*.”

3. In the transfer of these lands shall be preferred the inhabitants of the villages, (or settlements,) in the neighborhood where they exist, and who enjoyed the same in common whilst they were vacant.”



A decree of the Mexican Congress of 20th November, 1833, in part analogous to the decree before quoted of the Spanish Cortes of September, 1813, directing their general secularization, and containing these provisions:

1. The government shall proceed to secularize the missions of Upper and Lower California.

2. In each of said missions shall be established a parish, served by a curate of the secular clergy, with a dotation of two thousand to two thousand five hundred dollars, at the discretion of the government.

4. The mission churches, with the sacred vessels and ornaments, shall be devoted to the uses of the parish.

5. For each parish, the government shall direct the construction of a cemetery outside of the village.

7. Of the buildings belonging to each mission, the most fitting shall be selected for the dwelling of the curate, with a lot of ground not exceeding two hundred varas square, and the others appropriated for a municipal house and schools.

On the 2d December, 1833, a decree was published to the following effect:

“The government is authorized to take all measures that may assure the colonization, and make effective the secularization of the missions of Upper and Lower California, being empowered to this effect, to use, in the manner most expedient, the *fincas de obras pías* (property of the piety fund,) of those territories, to aid the transportation of the commission and families who are now in this capital destined thither.”

The commission and emigrants, spoken of in this circular, were a colony under the charge of Don José Maria Híjar, who was sent out the following spring, (of 1834,) as director of colonization, with instructions to the following effect: That he should “make beginning by occupying all the property pertinent to the missions of both Californias;” that in the settlements to be formed, special care should be taken to include the indigenous (Indian) population, mixing them with the other inhabitants, and not permitting any settlement of Indians alone; that topographical plans should be made of the squares which were to compose the villages, and in each square building lots be distributed to the colonist families; that outside the villages there should be distributed to each family of colonists, in full dominion and ownership, four *caballerías*\* of irrigable land, or eight, if dependent on the seasons, or sixteen if adapted to stock raising, and also live stock and agricultural implements; that this distribution made, (out of the moveable property of the mission,) one-half the remainder of said property should be sold, and the other half reserved on account of government, and applied to the expenses of worship, maintenance of the missionaries, support of schools, and the purchase of agricultural implements for gratuitous distribution to the colonists.

On the 16th April, 1834, the Mexican Congress passed an act to the following effect:

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\* A *caballería* of land is a rectangular paralelogram of 552 varas by 1,104 varas.

1. That all the missions in the Republic shall be secularized.
2. That the missions shall be converted into curacies, whose limits shall be demarked by the governors of the States where said missions exist.
3. This decree shall take effect within four months from the day of its publication.

The 7th November, 1835, an act of the Mexican Congress directed, that "until the curates mentioned in the second article of the law of 17th August, 1833, (above quoted,) should take possession, the government should suspend the execution of the other articles, and maintain things in the condition they were before said law."

I have, so far, referred to these various legislative and governmental acts in relation to the missions, only to show, beyond equivocation or doubt, the relation in which the government stood toward them, and the rights of ownership which it exercised over them. My attention was next directed to the changes that had taken place in the condition of those establishments, under the various provisions for their secularization and conversion into private property.

Under the act of the Spanish Cortes of September, 1813, all the missions in New Spain were liable to be secularized; that is, their temporalities delivered to lay administration; their character as *missions* taken away by their conversion into parishes under charge of the secular clergy; and the lands pertinent to them to be disposed of as other public domain. The question of putting this law in operation with regard to the missions in California, was at various times agitated in that province, and in 1830 the then Governor, Echandria, published a project for the purpose, but which was defeated by the arrival of a new governor, Victoria, almost at the instant the plan was made public. Victoria revoked the decree of his predecessor, and restored the missionaries to the charge of the establishments, and in their authority over the Indians.

Subsequent to that time, and previous to the act of secularization of August, 1833, nothing further to that end appears to have been done in California. Under that act, the first step taken by the Central Government, was the expedition of Hjar, above noticed. But the instructions delivered to him were not fulfilled. Hjar had been appointed Governor of California, as well as Director of Colonization, with directions to relieve Governor Figueroa. After Hjar's departure from Mexico, however, a revolution in the Supreme Government induced Hjar's appointment as political governor to be revoked; and an express was sent to California to announce this change, and with directions to Figueroa to continue in the discharge of the governorship. The courier arrived in advance of Hjar, who found himself on landing, (in September, 1834,) deprived of the principal authority he had expected to exercise. Before consenting to coöperate with Hjar in the latter's instructions concerning the missions, Figueroa consulted the Territorial Deputation. That body protested against the delivery of the vast property included in the mission estates—and to a settlement in which the

Indian pupils had undoubtedly an equitable claim—into Hajar's possession, and contended that his authority in the matter of the missions, depended on his commission as Governor, which had been revoked, and not on his appointment (unknown to the law) as Director of Colonization. As a conclusion to the contestation which followed, the Governor and Assembly suspended Hajar from the last mentioned appointment, and returned him to Mexico.\*

Figueroa, however, had already adopted (in August, 1834) a project of secularization, which he denominates a "Provisional Regulation." It provided, that the missions should be converted partially into pueblos or villages, with a distribution of lands and moveable property, as follows: to each individual, head of a family, over twenty-five years of age, a lot of ground, not exceeding four hundred nor less than one hundred varas square, in the common lands of the mission, with a sufficient quantity in common for pasturage of the cattle of the village, and also commons and lands for municipal uses; likewise, among the same individuals, one-half of the live stock, grain, and agricultural implements of the mission; that the remainder of the lands, immoveable property, stock, and other effects, should be in charge of mayordomos or other persons appointed by the governor, subject to confirmation by the General Government; that from this common mass should be provided the maintenance of the priest, and expenses of religious service, and the temporal expenses of the mission; that the minister should choose a place in the mission for his dwelling; that the emancipated Indians should unite in common labors for the cultivation of the vineyards, gardens, and field lands, which should remain undivided until the determination of the Supreme Government; that the donees, under the regulation, should not sell, burthen, or transfer, their grants, either of land or cattle, under any pretext; and any contracts to this effect should be null, the property reverting to the nation, the purchaser losing his money; that lands, the donee of which might die without leaving heirs, should revert to the nation; that *rancherías* (hamlets of Indians) situated at a distance from the missions, and which exceeded twenty-five families, might form separate pueblos, under the same rules as the principal one. This regulation was to begin with *ten* of the missions (without specifying them) and successively be applied to the remaining ones.

The Deputation, in session of the 3d of November of the same year (1834,) made provision for dividing the missions and other settlements into parishes or curacies, according to the law of August, 1833; authorized the missionary priests to exercise the functions of curates, until curates of the secular clergy should arrive, and provided for their salaries and expenses of worship. No change was made, in this act, in the regulations established by Gov. Figueroa, for the distribution and management of the property.

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\*Manifiesto á la Republica Mejicana, que hace el General José Figueroa, comandante general y gefe político de la Alta California. Monterey, 1835.

Accordingly, for most or all of the missions, administrators were appointed by the governor; and in some, but not all, partial distributions of the lands and moveable property were made, according to the tenor of the regulation. From this time, however, all tracts of lands pertinent to the missions, but not directly attached to the mission buildings, were granted, as any other lands of the territory, to the Mexican inhabitants, and to colonists, for stock farms and tillage.

The act of the Mexican Congress of 1835, directing the execution of the decree of 1833 to be suspended until the arrival of curates, did not, as far as I could ascertain, induce any change in the policy already adopted by the territorial authorities.

On the 17th January, 1839, Governor Alvarado issued regulations for the government of the administrators of the missions. These regulations prohibited the administrators from contracting debts on account of the missions; from slaughtering cattle of the missions, except for consumption, and from trading the mission horses or mules for clothing for the Indians; and likewise provided for the appointment of an inspector of the missions, to supervise the accounts of the administrators, and their fulfilment of their trusts. Art. 11 prohibited the settlement of white persons in the establishments, "whilst the Indians should remain in community." The establishments of San Carlos, San Juan Bautista and Sonoma were excepted from these regulations, and to be governed by special rules.

On the first of March, 1840, the same Governor Alvarado suppressed the office of administrators, and replaced them by *mayordomos*, with new and more stringent rules for the management of the establishments; but not making any change in the rules of Governor Figueroa, regarding the lands or other property.

By a proclamation of the 29th of March, 1843, Governor Micheltorrena, "in pursuance (as he states) of an arrangement between the Governor and the prelate of the missions," directed the following named missions to be restored to the priests "as tutors to the Indians, and in the same manner as they formerly held them," namely: the missions of San Diego, San Luis Rey, San Juan Capistrano, San Gabriel, San Fernando, San Buenaventura, Santa Barbara, Santa Ynes, La Purisima, San Antonio, Santa Clara, and San José. The same act set forth, that, "as policy made irrevocable what was already done," the missions should not reclaim any lands thitherto granted; but should collect the cattle and moveable property which had been lent out either by the priests or administrators, and settle in a friendly way with the creditors; and likewise regather the dispersed Indians, except such as had been legally emancipated, or were at private service. That the priests might provide out of the products of the missions for the necessary expenses of converting, subsisting, and clothing the Indians, for a moderate allowance to themselves, economical salaries to the *mayordomos*, and the maintenance of Divine worship; under the condition, that the priests should bind themselves in honor and con-

science to deliver to the public treasury one-eighth part of all the annual products of the establishments. That the Departmental government would exert all its power for the protection of the missions, and the same in respect to individuals, and to private property, securing to the owners the possession and preservation of the lands they now hold; but promising not to make any new grants without consultation with the priests, unless where the lands were notoriously unoccupied, or lacked cultivation, or in case of necessity.

Micheltorrena's governorship was shortly after concluded. There had been sent into the Department with him a considerable body of persons, called *presidarios*, that is, criminals condemned to service—usually, as in this case, military service on the frontier—and their presence and conduct gave such offence to the inhabitants, that they revolted, and expelled him and the *presidarios* from the country. He was succeeded by Don Pio Pico, in virtue of his being the “first vocal” of the Departmental Assembly,\* and also by choice of the inhabitants, afterward confirmed by the central government, which, at the same time, gave additional privileges to the Department, in respect to the management of its domestic affairs.

The next public act, which I find, in relation to the missions, is an act of the Departmental Assembly, published in a proclamation of Governor Pico, 5th June, 1845. This act provides: 1. That the governor should call together the neophytes of the following named missions: San Rafael, Dolores, Soledad, San Miguel, and La Purísima; and in case those missions were abandoned by their neophytes, that he should give them one month's notice, by proclamation, to return and cultivate said missions, which if they did not do, the missions should be declared abandoned, and the assembly and governor dispose of them for the good of the Department. 2. That the missions of Carmel, San Juan Bautista, San Juan Capistrano, and San Francisco Solano, should be considered as *pueblos*, or villages, which was their present condition; and that the property which remained to them, the governor, after separating sufficient for the curate's house, for churches and their pertinencies, and for a municipal house, should sell at public auction; the product to be applied, first to paying the debts of the establishments, and the remainder, if any, to the benefit of divine worship. 3. That the remainder of the missions to San Diego, inclusive, should be rented, at the discretion of the governor, with the proviso, that the neophytes should be at liberty to employ themselves at their option on their own grounds, which the governor should designate for them, in the service of the rentee, or of any other person. 4. That the principal edifice of the mission of Santa Barbara should be excepted from the proposed renting; and in it the governor should designate the parts most suitable for the residence of the bishop and his attendants, and of the missionary priests then living there; moreover, that the rents

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\* According to act of the Mexican Congress of 6th of May, 1822, to provide for supplying the place of provincial governors, in default of an incumbent.

arising from the remainder of the property of said mission should be disbursed; one-half for the benefit of the church and its ministry, the other for that of its Indians. 5. That the rents arising from the other missions should be divided, one-third to the maintenance of the minister, one-third to the Indians, one-third to the government.

On the 28th October, of the same year, (1845,) Governor Pico gave public notice for the sale, to the highest bidder, of five missions, to wit: San Rafael, Dolores, Soledad, San Miguel, and La Purisima; likewise, for the sale of the remaining buildings in the pueblos (formerly missions) of San Luis Obispo, Carmel, San Juan Bautista, and San Juan Capistrano, after separating the churches and their appurtenances, and a curate's, municipal, and school houses. The auctions were appointed to take place, those of San Luis Obispo, Purisima, and San Juan Capistrano, the first four days of December following, (1845;) those of San Rafael, Dolores, San Juan Bautista, Carmel, Soledad, and San Miguel, the 23d and 24th of January, 1846; meanwhile, the government would receive and take into consideration proposals in relation to said missions.

In the same proclamation, Pico proposed to rent to the best bidder, for a period of nine years, and under conditions for the return of the property in good order and without waste, the missions of San Fernando, San Buenaventura, Santa Barbara, and Santa Ynes; the rentings to include all the lands, stock, agricultural tools, vineyards, gardens, offices, and whatever, in virtue of the inventories, should be appurtenant to said missions, with "the exception only of those small pieces of "ground which have always been occupied by some Indians of the "missions;" likewise to include the buildings, saving the churches and their appurtenances, and the curate's, municipal and school houses, and except in the mission of Santa Barbara, where the whole of the principal edifice should be reserved for the bishop and the priests residing there. The renting of the missions of San Diego, San Luis Rey, San Gabriel, San Antonio, Santa Clara, and San José, it was further announced, should take place as soon as some arrangement was made concerning their debts. It was also provided that the neophytes should be free from their pupilage, and might establish themselves on convenient parts of the missions, with liberty to serve the rentee, or any other person; that the Indians who possessed pieces of land, in which they had made their houses and gardens, should apply to the government for titles, in order that their lands might be adjudicated to them in ownership; "it being understood that they would not have power to sell their lands, but that they should descend by inheritance."

On the 30th March, 1846, the Assembly passed an act—

1. Authorizing the governor, in order to make effective the object of the decree of 28th May previous, to operate, as he should believe most expedient, to prevent the total ruin of the missions of San Gabriel, San Luis Rey, San Diego, and others found in like circumstances.
2. That as the remains of said establishments had large debts against them, if the existing property was not sufficient to cover the same, they

might be put into bankruptcy. 3. That if, from this authorization, the governor, in order to avoid the destruction to which the said missions were approaching, should determine to sell them to private persons, the sale should be by public auction. 4. That when sold, if, after the debts were satisfied, there should be any remainder, it should be distributed to the Indians of the respective establishment. 5. That, in view of the expenses necessary in the maintenance of the priest, and of Divine worship, the governor might determine a portion of the whole property, whether of cultivable lands, houses, or of any other description, according to his discretion, and by consultation with the respective priests. 6. The property thus determined, should be delivered as by sale, but subject to a perpetual interest of four per cent. for the uses above indicated. 7. That the present act should not affect any thing already done or contracts made in pursuance of the decree of 28th May last, nor prevent any thing being done conformable to that decree. 8. That the governor should provide against all impediments that might not be foreseen by the act, and in six months, at farthest, give an account to the Assembly of the results of its fulfilment.

Previous to several of the last mentioned acts, that is, on the 24th August, 1844, the Departmental Assembly, in anticipation of a war breaking out, passed a law authorizing the governor, on the happening of that contingency, either "to sell, hypothecate, or rent, the houses, landed property, and field lands, of the missions, comprehended in the whole extent of the country from San Diego to Sonoma," except that of Santa Barbara, "reserved for the residence of the bishop."

These comprise all the general acts of the authorities of California which I was able to meet with, on the subject of the missions. Of the extent or manner, in which they were carried into execution, so far as the missions proper—that is, the mission buildings and lands appurtenant—are concerned, but little information is afforded by what I could find in the archives. A very considerable part, however, of the grants made since the act of secularization of 1833, (comprising the bulk of all the grants in the country,) are of lands previously recognised as appurtenances of the missions, and so used as grazing farms, or for other purposes. In some cases, the petitions for such grants, were referred to the principal priest at the mission to which the land petitioned for was attached, and his opinion taken whether the grant could be made without prejudice to the mission. In other cases, and generally, this formality was not observed. This remark relates to the farms and grazing grounds (*ranchos*) occupied by the missions apart from the lands around the mission buildings. There are, however, some grants in the immediate precincts of the missions, and some titles to Indians, pursuant to the regulation of Governor Figueroa, and the proclamation of Governor Pico, of record in the file of *expedientes* of grants before noticed.

What I have been able to gather from the meagre records and memoranda in the archives, and from private information and examination, of the actual state of the missions, is given below. It is necessary to explain, however, still farther than I have, that in speaking of the mis-

sions now, we cannot understand the great establishments which they were. Since 1833, and even before, farms of great (many leagues) extent, and many of them, have reduced the limits they enjoyed, in all cases very greatly, and in some instances into a narrow compass; and while their borders have been thus cut off, their planting and other grounds inside are dotted to a greater or less extent by private grants. The extent to which this has been the case, can only be ascertained by the same process that is necessary every where in California, to separate public from private lands—namely, authorized surveys of the grants, according to their calls, which though not definite, will almost always furnish some distinguishable natural object to guide the surveyor.\* The actual condition of the establishments, understanding them in the reduced sense above shown, was, at the time the Mexican government ceased in California, and according to the best information I could obtain, as follows:

Missions.	Where situated.	
San Diego, -	- 32° 48'	Sold to Santiago Arguello, 8 June, 1846.
San Luis Rey, -	- 33° 03'	Sold to Antonio Cot and Andres Pico, 13 May, 1846.
San Juan Capistrano, -	- 33° 26'	Pueblo, and remainder sold to John Foster and James McKinley, 6 December, 1845.
San Gabriel, -	- 34° 10'	Sold to Julian Workman and Hugo Reid, 18 June, 1846.
San Fernando, -	- 34° 16'	Rented to Andres Pico, for nine years, from December, 1845, and sold to Juan Celis, June, 1846.
San Buenaventura, -	- 34° 36'	Sold to Joseph Arnaz.
Santa Barbara, -	- 34° 40'	Rented for nine years, from 8 June, 1846, to Nicholas Den.
Santa Ynes, -	- 34° 52'	Rented to Joaquin Carillo.
La Purisima, -	- 35° 00'	Sold to John Temple, 6 December, 1845.
San Luis Obispo, -	- 35° 36'	Pueblo.
San Miguel, -	- 35° 48'	Uncertain.
San Antonio, -	- 36° 30'	Vacant.
Soledad, -	- 36° 38'	House and garden sold to Sobranes, 4 Jan., 1846.
Carmel, -	- 36° 44'	Pueblo.
San Juan Bautista, -	- 36° 58'	Pueblo.
Santa Cruz, -	- 37° 00'	Vacant.
Santa Clara, -	- 37° 20'	In charge of priest.
San José, -	- 37° 30'	In charge of priest.
Dolores, -	- 37° 58'	Pueblo.
San Rafael, -	- 38° 00'	Mission in charge of priest.
San Francisco Solano, -	- 38° 30'	Mission in charge of priest.

The information above given concerning the condition of the missions, at the time of the cessation of the former Government, is partly obtained from documents in the archives, and partly from private sources. What is to be traced in the archives is on loose sheets of paper, liable to be lost; and parts quite likely have been lost; there may also be some papers concerning them which, in the mass of documents, escaped my examination. I have no doubt, however, of the exactness of the statement above given, as far as it goes.

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\*I was told by Major J. R. Snyder, the gentleman appointed territorial surveyor by Col. Mason, and who made surveys of a number of grants in the central part of the country, that he had little difficulty in following the calls, and ascertaining the bounds of the grants.



It will be seen, then, that the missions—the principal part of their lands cut off by private grants; but still, no doubt, each embracing a considerable tract—perhaps from one to ten leagues—have, some of them, been sold or granted under the former Government, and become private property; some converted into villages, and consequently granted in the usual form in lots to individuals and heads of families; a part are in the hands of rentees, and at the disposal of the Government when these contracts expire; and the remainder at its present disposal.

If it were within my province to suggest what would be an equitable disposition of such of the missions as remain the property of the Government, I should say, that the churches, with all the church property and ornaments; a portion of the principal building, for the residence of the priest, with a piece of land equal to that designated in the original act of the Mexican Congress for their secularization, (to wit, two hundred varas square,) with another piece for a cemetery, should be granted to the respective Catholic parishes, for the uses specified; and the remainder of the buildings, with portions of land attached, for schools and municipal or county purposes; and for the residence of the bishop, the same allotment at the mission of Santa Barbara that was made in the last proclamation of Governor Pico. The churches, certainly, ought not to be appropriated to any other use; and less than I have suggested would, I think, be less than equity and justice, and less than the inhabitants have always considered and enjoyed as their right.

To conclude the inquiry in the last portion of your letter of instructions, namely, concerning "*large grants*," other than the supposed ecclesiastical grants.

I did not find in the archives of California any record of large grants, in the sense I suppose the term to be here used. There are a number of grants to the full extent of the privilege accorded by law to individual concessions, and of the authority of the local government to make, independent of the Central Government—to wit, of eleven *sitios*, or leagues square.

There are understood, in the country, however, to be large claims, reputed to be founded on grants direct from the Mexican Government—one held by Captain Sutter; another by General Vallejo. The archives (as far as I could discover) only show that Captain Sutter received, on the 18th July, 1841, from Governor Alverado, the usual grant of *eleven sitios*, on the river Sacramento, and this is all I ascertained. The archives likewise show that Gen. Vallejo received from Governor Michel-torrena, on the 22d October, 1823, a grant of ten *sitios*, called "*Petaluma*," in the district of Sonoma; and I was informed by a respectable gentleman in California, that Gen. V. had likewise a grant, from the Mexican Government, given for a valuable consideration, of a large tract, known by the name of "*Soscol*," and including the site of the present town of Benicia, founded by Messrs. Vallejo and Semple, in the straits of Carquinez. It is also reputed that the same gentleman has extensive claims in the valley of Sonoma, and on Suisun bay. It appears from documents which Gen. Vallejo caused to be published in

the newspapers of California in 1847, that he was deputed, in the year 1835, by Gen. Figueroa, to found a settlement in the valley of Sonoma, "with the object of arresting the progress of the Russian settlements of Bodega and Ross." Gen. Vallejo was at that time (1835) military commander of the northern frontier. He afterwards, (in 1836,) by virtue of a revolution which occurred in that year in California, became military commandant of the department—the civil and military government being by the same act divided—to which office he was confirmed in 1838 by the Supreme Government.

The following extract from Gov. Figueroa's instructions to him, will show the extent of Gen. Vallejo's powers, as agent for colonizing the north:

"You are empowered to solicit families in all the territory and other States of the Mexican Republic, in order to colonize the northern frontiers, granting lands to all persons who may wish to establish themselves there, and those grants shall be confirmed to them by the Territorial Government, whenever the grantees shall apply therefor; the title which they obtain from you serving them in the mean time as a sufficient guarantee, as you are the only individual authorized by the superior authority to concede lands in the frontier under your charge. The Supreme Government of the territory is convinced that you are the only officer to whom so great an enterprize can be entrusted; and in order that it may be accomplished in a certain manner, it is willing to defray the necessary expenses to that end."

An official letter to Gen. Vallejo from the Department of War and Marine, dated at Mexico, 5th August, 1839, expresses approbation of what had thitherto been done in establishing the colony, and the desire that the settlements should continue to increase "until they should be so strong as to be respected not only by the Indian tribes, but also by the establishments of the foreigners who should attempt to invade that valuable region."

I did not find any trace of these documents, or of any thing concerning Gen. Vallejo's appointment or operations, in the government archives. But there is no reason to doubt the genuineness of the papers. They do not, however, convey any title to lands, beyond authority to grant, during the time his appointment continued, to actual colonizers. The appointment of Gen. V. seems to have been made by direction of the Supreme (National) Government. I had no means of ascertaining how long the appointment lasted, nor to what extent its powers were used; but infer from Vallejo himself taking a grant of his rancho of Peteluma, in 1843, that his own authority, in that respect, had then ceased. As there are other grants, also, of considerable extent, in the same neighborhood, embraced in the government archives, I apprehend that most, if not all, of the grants made by him, exclusive of what may be embraced in the town privileges of Sonoma, (and which will be noticed hereafter,) were confirmed, or re-granted to the parties, by the departmental government. In this view, however, I may be mistaken. And I desire to be distinctly understood as not intending to

throw any doubt or discredit on the titles or claims of either of the gentlemen I have mentioned. I had no opportunity of inspecting any grants they may possess, beyond what I have stated ; and I imagine their lands can only be separated from the domain by the process universally requisite—the registration of outstanding grants, and their survey.

### III. "GRANTS OF ISLANDS, KEYS, AND PROMONTORIES, POINTS OF IMPORTANCE TO THE PUBLIC," &c.

The only points of special public importance which I learned were granted prior to the cessation of the former government, are the site of the old fort of San Joaquin, near the outlet of the bay of San Francisco, and Alcatraz (or Bird,) Island, commanding its entrance: the Key to the Golden Gates. The date of the first named grant is 25th June, 1846; it was made to Benito Diaz, and by him transferred to Mr. T. O. Larkin, of Monterey. I understand a portion of the land embraced in the grant is in occupation of the United States troops, or has property of the United States upon it, and a part in possession of Mr. Larkin.

Alcatraz island was granted in June, 1846, to Mr. Francis P. Temple, of Los Angeles. The indispensableness of this point to the government, both for the purpose of fortification, and as a proper position for a light-house, induced Lt. Col. Frémont, when governor of California, to contract for the purchase of it on behalf of the United States. The government, it is believed, has never confirmed the purchase, or paid the consideration. This island is a solid rock, of about half a mile in circumference, rising out of the sea just in front of the inner extremity of the throat or narrows, which forms the entrance to the bay, and perfectly commands both front and sides. It is also in the line of the sailing directions for entering the bay,\* and consequently a light-house upon it is indispensable.

The local government had special authority and instructions from the general government, under date of 12th July, 1838, to grant and distribute lands in "the desert islands adjacent to that department."

Whether the grants "*purport to be inchoate or perfect?*" The grants made in that department under the Mexican law, all, I believe, purport to be perfect, except in the respect of requiring "confirmation by the departmental assembly." The difficulties of determining what grants have not received this confirmation have been above explained.

### IV. "IF THERE BE ANY ALLEGED GRANTS OF LANDS COVERING A PORTION OF THE GOLD MINES, AND WHETHER IN ALL GRANTS IN GENERAL [UNDER THE MEXICAN GOVERNMENT,] OR IN CALIFORNIA IN PARTICULAR, THERE ARE NOT CONDITIONS AND LIMITATIONS, AND WHETHER THERE IS NOT A RESERVATION OF MINES OF GOLD AND SILVER, AND A SIMILAR RESERVATION AS TO QUICKSILVER AND OTHER MINERALS?"

There is but one grant that I could learn of, which covers any por-

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\* Beechy's Narrative of a Voyage to the Pacific: London, 1831: Appendix, p. 562.

tion of the gold mines. Previous to the occupation of the country by the Americans, the parts now known as *The Gold Region*, were infested with the wild Indians, and no attempts made to settle there. The grant that I refer to, was made by Governor Micheltorrena, to Don Juan B. Alvarado, in February, 1844, and is called the *Mariposas*, being situated on the Mariposas creek, and between the Sierra Nevada and the river Joaquin, and comprises ten *sitios*, or leagues square, conceded, as the grant expresses, "in consideration of the public services" of the grantee. It was purchased from the grantee (Alvarado,) in February, 1847, by Thomas O. Larkin, esq., for Mr. J. C. Frémont, and is now owned by that gentleman.

The only "*conditions or limitations*" contained in the grants in California, which could affect the validity of the title, are, that in the grants made by some of the governors, a period of time (one year,) was fixed, within which the grantee should commence improvements on the grant. In case of failure, however, the grant was not thereby void, but open to denouncement by other persons. This limitation was not contained in such of the grants made in the time of Micheltorrena, as I have examined, nor is it prescribed in the law. No doubt, however, the condition was fulfilled in most instances where it was inserted, unless in a few cases where the lands conceded were in parts of the country infested by the wild Indians, and its fulfilment consequently impossible. In fact, as far as I understood, it was more customary to occupy the land in anticipation of the grant. The grants were generally for actual (immediate) occupation and use.

I cannot find in the Mexican laws or regulations for colonization, or for the granting of lands, any thing that looks to a reservation of the mines of gold, or silver, quicksilver, or other metal or mineral; and there is not any such thing expressed in any of the many grants that came under my inspection. I inquired and examined, also, while in Mexico, to this point, and could not learn that such reservations were the practice, either in general, or in California in particular.

V. "IN ALL LARGE GRANTS, OR GRANTS OF IMPORTANT OR VALUABLE SITES, OR OF MINES, WHETHER OR NOT THEY WERE SURVEYED AND OCCUPIED UNDER THE GOVERNMENT OF SPAIN OR MEXICO, AND WHEN PUBLICITY WAS FIRST GIVEN TO SUCH GRANTS?"

The first part of this inquiry is already answered, in the statement that, as far I am aware, there were never any *surveys* made in the country, during its occupation by either of the former governments. Most of the grants, however, were *occupied* before, or shortly after they were made, and all, as far as I am informed, except where the hostile Indian occupation prevented. In respect of the grants to which I have made any reference, I did not learn that there had been any delay in giving publicity to them.

Having met, sir, as far as in my power, the several inquiries set forth in the letter of instructions you were pleased to honor me with, my at-

tion was turned, as far as they were not already answered, to the more detailed points of examination furnished me, with your approbation, by the Commissioner of Public Lands. The very minute information contemplated by those instructions, it would have been impossible, as you justly anticipated, to obtain in the brief time proposed for my absence, even had it been accessible in systematic archives and records. My examination, moreover, was sufficient to show me that such minute and exact information, on many of the various heads proposed, is not attainable at all; and that the only mode of *approximating* it must be through such measures as will produce a general registration of written titles, and verbal proof of possession where written titles are wanting, followed or accompanied by a general *survey*. By such means only can an *approximation* be made to the minute information sought, of the character, extent, position, and date, particularly of the old grants in California.

The first branch of the inquiries proposed by the instructions from the Land Office, relate to "Grants or claims derived from the Government of *Spain*."

The chief local authority to *grant* lands in the province of California was, *ex officio*, the military commandant, who was likewise governor of the province; and the principal *recipients* of grants, officers and soldiers as they retired from service. The grants to the soldiers were principally of lots in and about the *presidios* (military posts) or the *pueblos* (villages); to the officers, farms and grazing lands, in addition to such lots.

There were also, at different times, settlers brought from Sonora, and other provinces of New Spain, (single men and families,) and grants made to them; usually of village lots, and to the principal men, ranchos in addition. The first settlement at San Francisco was thus made; that is, settlers accompanied the expeditions thither, and combined with the military post. The pueblos of San José and Los Angeles were thus formed. The governor made grants to the retired officers, under the general colonization laws of Spain, but, as in all the remote provinces, much at his own discretion. He had likewise special authority to encourage the population of the country, by making grants of farming lots to soldiers who should marry the native women bred at the missions. The captains of the *presidios* were likewise authorized to make grants within the distance of two leagues, measuring to the cardinal points, from their respective posts. Hence, the presidios became, in fact, villages. The Viceroy of New Spain had also of course authority to make grants in California, and sometimes exercised it. It was pursuant to his order that presidios, missions, and pueblos were severally established, and the places for them indicated by the local authority. Under all these authorities, grants were made; strictness of written law required that they should have been made by exact measurements, with written titles, and a record of them kept. In the rude and uncultivated state of the country that then existed, and lands possessing so little value, these formalities were to a great extent disregarded.

ed; and if not then altogether disregarded, the evidence of their observance in many cases now lost. It is certain, that the measurements even of the grants of village lots, were very unexact and imperfect; and of larger tracts, such as were granted to the principal men, no measurement at all attempted, and even the quantity not always expressed, the sole description often being by a name, descriptive, in fact or by repute, of the place granted. The law of custom, with the acquiescence of the highest authorities, overcame, in these respects, the written law. Written permits and grants were no doubt usually given, but if any systematic records or memoranda of them were kept, they have now disappeared, or I was not able to meet with them. In some cases, but not in all, the originals no doubt still exist, in the possession of the descendants of the grantees; indeed, I have been assured there are many old written titles in the country, of which the archives do not contain any trace. But, in other cases, no doubt, the titles rested originally only on *verbal* permits. It was very customary, in the Spanish colonies, for the principal neighborhood authorities to give permission to occupy and cultivate lands, with the understanding that the party interested would afterward at a convenient occasion obtain his grant from the functionary above. Under these circumstances, the grant was seldom refused, but the application for it was very often neglected; the title by permission being entirely good for the purposes of occupation and use, and never questioned by the neighbors. All these titles, whatever their original character, have been respected during the twenty-six or twenty-seven years of Mexican and local government. And whether evidenced now or ever by any written title, they constitute as meritorious and just claims as property is held by in any part of the world. They were, in the first place, the meagre rewards for expatriation, and arduous and hazardous public service in a remote and savage country; they are now the inheritance of the descendants of the first settlers of the country, and who redeemed it from (almost the lowest stage of) barbarism. Abstractly considered, there cannot be any higher title to the soil.

Many of the holders of old grants have taken the precaution to have them renewed, with a designation of boundary and quantity, under the forms of the Mexican law; and of these the proper record exists in the archives. To what extent old titles have been thus renewed, could not be ascertained, for the reason that there is no record of the old titles by which to make the comparison.

The principal difficulty that must attend the separation of the old grants from the public lands, or rather, to ascertain what is public domain and what private property, in the parts where those old grants are situate, is in the loose designation of their limits and extent. The only way that presents itself of avoiding this difficulty, and of doing justice both to the claimant and the government, would seem to be in receiving, with respect to the old grants, verbal testimony of occupation and of commonly reputed boundaries, and thereby, with due consideration of the laws and principles on which the grants were made, governing the surveys.

The military commandant or governor had authority, by virtue of his office, to make grants. He had, also, special authority and direction to do so, in a letter of instructions from the Viceroy, 17th August, 1773, and entitled "Instructions to be observed by the commandant appointed to the new establishments of San Diego and Monterey." These instructions authorized (as already noticed) the allotment of lands to Indians, either in community or individually; but it is to be understood only of Indians who should be in charge of the missions, and of the parcels of land within the mission settlements. Article 13 gave the commandant "equal authority, likewise, to distribute lands to other settlers, according to their merit, and conformably to the compilations of laws concerning new conquests and settlements." That is, according to the compilation of the "Laws of the Indias," which we know make certain provisions of the most liberal character for the founding and encouragement of new populations.

Subsequently, without abrogating the general colonial laws, a special Regulation was adopted, with the royal assent, for the government of the Californias, and making special provision for the settlement of that province, and the encouragement of colonizers. This regulation was drawn in Monterey, by Governor Don Felipe Neve, in 1779, and confirmed by a Royal Cedula of 14th October, 1781. Its character and objects are shown in its title, namely: "Rules and directions for the Presidios of the Peninsula of Californias, erection of new Missions, and encouragement of the Population, and extension of the establishments of Monterey." The first thirteen articles relate to the presidios and military. Title fourteen relates to the "Political Government and directions for Peopling." After providing liberal *bonuses* to new settlers, in respect of money, cattle, and exemptions from various duties and burthens, this Regulation prescribes: That the *solares* (house lots) which shall be granted to the new settlers, shall be designated by the governor, in the places, and with the extent that the tract chosen for the new settlement will allow, and in such manner that they shall form a square, with streets, conformably to the laws of the kingdom; and by the same rule shall be designated common lands for the pueblos, with pasturage and fields for municipal purposes (*propios*.) That each *suerte* (out-lot,) both of irrigable and unirrigable land, shall be two hundred varas square; and of these *suertes*, four (two watered and two dry) shall be given, with the *solar*, or house lot, in the name of the king, to each settler.

These rules relate to the formation of villages and farming settlements, and are exclusive of the extensive ranchos—farms and grazing lands—allotted to persons of larger claims or means; sometimes direct from the viceroy, usually by the local governor.

The acts of the Spanish Cortes, in 1813, heretofore quoted, may also be referred to as a part of the authority under which grants might be made in California, during the continuance of the Spanish government, and prior to the colonization laws of Mexico, and afterwards, indeed, as far as not superceded by those laws.

The second point of inquiry in the instructions furnished me from the Land Office, relating to grants made under the *Mexican* Government, is already met in most respects, as far as was in my power to meet it, in the early part of this report. The "*authority of the granting officers, and their powers for alienating the national domain,*" were derived from appointment by the Central Government, and from the general colonization laws and regulations of the Republic. There is little room for discrimination "between such as are perfect titles, and such as are inceptive or inchoate." A grant by the territorial (or departmental) governors within the extent of eleven *sitios*, constituted a *valid* title, and with the approbation of the departmental assembly, a *perfect* one. After the governor's concession, however, it could not with propriety be termed merely *inceptive*; for, in fact, it was complete until the legislature should *refuse* its approbation, and then it would be the duty of the governor to appeal for the claimant to the Supreme Government. I am not aware that a case of this kind arose. The difficulties, already explained, of ascertaining to what grants the legislative approbation was accorded, and from what it was withheld; the impossibility, in fact, of ascertaining in many cases, coupled with the fact that that approbation was so seldom refused, and that the party had still an appeal in case of refusal, would seem to render that provision of the law of those grants nugatory as a test of their merits.

The third inquiry, touching "grants made about the time of the *revolutionary* movements in California, say in the months of June and July, 1846," is chiefly answered in what is said concerning the actual condition of the missions, and the grants of Fort Joaquin at the mouth, and Alcatraz island inside the entrance, of the bay of San Francisco. In addition to these, the large island of *San Clemente*, I understood, was granted about that time, say in May, 1846. I found nothing in the archives concerning it. I do not think there were other grants to attract particular attention, except the proposed great Macnamara grant or contract, of which the principal papers are on file in the State Department, and have been printed in the Congressional documents.

In the second branch of the last mentioned inquiry, namely, concerning any "grants made *subsequent to the war*," I suppose the intent is, grants, if any, made after the reduction of the country by the arms of the United States. There are, of course, no Mexican grants, or grants by the Mexican authorities, which *purport* to have been issued subsequent to that time. The inquiry must relate, therefore, either to supposed *simulated grants*, by persons formerly in authority there, or to whatever may have been done, in respect of the domain, by or under the American authorities. It is believed in the country that there are some simulated grants in existence; that is, some papers purporting to be grants which have been issued since the cessation of the Mexican Government, by persons who formerly, at different times, had the faculty of making grants in that country. It would be impossible, however, to make a list of them, with the particulars enumerated in the instructions; for, if there be any such, they would of course not be submitted



for public inspection, or in any way seek the light. But I believe it would not be difficult for a person skilled in the grants in that country, and acquainted with the archives, and the various facts to be gathered from them, to detect any simulated paper that might be thus issued after the person issuing it had ceased from his office. The test, however, would necessarily have to be applied to each case as it rose. No general rule, I believe, can be laid down.

Recurring, then, to the other point which I suppose the inquiry to relate to. The most considerable act, affecting the domain, had subsequent to the accession of the American authorities in California, was a "decree" made by Gen. Kearny, as governor, under date of 10th March, 1847, as follows:

"I, Brigadier General S. W. Kearny, Governor of California, by virtue of authority in me vested, by the President of the United States of America, do hereby *grant, convey, and release* unto the town of San Francisco, the people, or corporate authorities thereof, all the right, title, and interest of the *Government of the United States*, and of the *territory of California*, in and to the beach and water lots on the east front of said town of San Francisco, included between the points known as the Rincon and Fort Montgomery, excepting such lots as may be selected for the use of the United States Government by the senior officers of the army and navy now there; provided the said ground hereby ceded, shall be divided into lots, and sold by public auction to the highest bidder, after three months notice previously given; the proceeds of said sale to be for the benefit of the town of San Francisco."

Pursuant to the terms of this paper, what are termed "government reservations" were made, both within and outside the limits specified, and the remainder of the lots designated have been since in great part sold by the town of San Francisco. These lots extend into the shallow water along the beach of San Francisco, and are very suitable and requisite for the business purposes of that growing city. The number of four hundred and forty-four of them were sold in the summer ensuing the "Decree," and in December last, I have learned since my return, the remainder, or a large portion of them, were disposed of by the corporation. But little public use has been made of what are denominated the "government reservations." Portions of them are reputed to be covered by old grants; portions have been settled on and occupied by way of preëmption, and other portions, particularly "Rincon Point," have been rented out, as I am informed, to individuals, by the late military government.

Under the above "decree" of General Kearny, and the consequent acts of the authorities of San Francisco, such multiplied, diversified, and important private interests have arisen, that, at this late day, no good, but immense mischief, would result from disturbing them. The city has derived a large amount of revenue from the sale of the lots; the lots have been resold, and transferred in every variety of way, and passed through many hands, and on many of them costly and permanent improvements have been made; improvements required by the

business and wants of the community, and which ought to give the makers of them an equitable interest in the land, even without the faith of the Government implied by leaving the act of its agent so long unquestioned. An act of Congress, relinquishing thus in the lawful mode, the interest of the United States in those beach and water lots, would seem to be only an act of justice to the city and to the lot holders, and to be necessary to give that validity and confidence that ought to attach to property of such great value and commercial importance.

In regard to the "government reservations," so called, where they may be in private hands, whether under a former grant, or by occupancy and improvement, the same equity would seem to call for at least a *pre-emption right* to be allowed the holders, except for such small parts as may be actually required for public uses. In regard to the places known as "Clark's Point," and the "Rincon Point," which are outside of the land embraced in Gen. Kearny's decree, and portions of which it is understood have been put in the hands of rentees, perhaps the most equitable use that could be made of them, (except, as before, the parts needed for public uses,) would be to relinquish them to the city, to be sold as the beach and water lots have been; with due regard, at the same time, to rights accruing from valuable improvements that may have been made upon them, but repressing a monopoly of property so extensive and valuable, and so necessary to the improvement, business, and growth of the city.

Other operations in lands which had not been reduced to private property at the time of the cessation of the former government, have taken place in and about different towns and villages, by the alcaldes and other municipal authorities continuing to make grants of lots and outlots, more or less according to the mode of the former government. This, I understand, has been done, under the supposition of a right to the lands granted, existing in the respective towns as corporations. Transactions of this nature have been to a very large extent at San Francisco; several hundred inlots of fifty varas square, and outlots of one hundred varas square, have been thus disposed of, by the successive alcaldes of the place since the occupation of it by the American forces, both those appointed by the naval and military commanders, and those subsequently chosen by the inhabitants.

It is undoubtedly conformable to the Spanish colonial laws, that, when villages were to be established, there should be liberal allotments to the first settlers, with commons for general use, and municipal lands (*propios*) for the support and extension of the place—that is, to be rented, or otherwise transferred, subject to a tax; and that the principal magistrate, in conjunction with the *ayuntamiento*, or town council, should have the disposal of those town liberties, under the restrictions of law, for the benefit of the place; and the same was the practice in California, under the Mexican government. It is not always so easy to determine within what limits this authority might be exercised; but in new communities, whether the settlement was founded by an *empresario* (contractor,) or by the government, the allotments

were always on a liberal scale, both for the individuals and the village. A very early law (law 6, tit. 5, lib. 4, Recop. de Indias) fixes "four leagues of limits and land (*de termino y territorio*,) in square or prolonged, according to the nature of the tract," for a settlement of thirty families; and I suppose this is as small a tract as has usually been set apart for village uses and liberties, under the Spanish or Mexican government in New Spain; sometimes much more extensive privileges have no doubt been granted. The Instructions of 1773 to the commandant of the new posts, authorizes pueblos to be formed, without specifying their limits, which would of course bring them under the general law of four leagues.

The royal Regulation of 1781, for the Californias, directs suitable municipal allotments to be made, "conformable to the law;" and this likewise must refer to the law specifying four leagues square.

The letter of instructions of 1791, authorizing the captains of presidios to make grants, in the neighborhood of their respective posts, specifies the same quantity, to wit, "the extent of four common leagues, measured from the centre of the Presidio square, two leagues in each direction, as sufficient for the new pueblos to be formed under the protection of the presidios."

The Mexican laws, as far as I am aware, make no change in this rule; and the colonization regulations of 1828, provide (art. 13,) that "the reunion of many families into a town shall follow in its formation, policy, &c., the rule established by the existing laws for the other towns of the Republic."

From all these, and other acts which might be quoted, it would seem that where no special grant has been made, or limits assigned to a village, the common extent of four leagues would apply to it; it being understood, however, as the same law expresses, that the allotment should not interfere with the rights of other parties. The Presidio settlements, under the order of 1791, were certainly entitled to their four leagues; the right of making grants within the same only transferred from the presidio captain to the municipal authorities who succeeded him, as is conformable to Spanish and Mexican law and custom. This was the case under the Spanish government; and I am not aware that the principle has been changed; though no doubt grants have been made to individuals which infringed on such village limits. The Territorial Deputation of California, however, by an act of 6th August, 1834, directed that the ayuntamientos of the pueblos should "make application for common and municipal lands (*ejidos y propios*) to be assigned them." Wherever it shall appear that this was done, the town, I suppose, could only now claim what was then set apart for it. Where it was omitted or neglected, custom, reputed limits, and the old law, would seem to be a safe rule.

As to the point now under consideration, that of *San Francisco*, I find that in the acts of the Departmental authorities the settlements in and about the presidio were styled "*the pueblo of San Francisco*," and the particular place where the village principally was and the

city now is, "*the point of Yerba Buena.*" The local authorities, as its alcalde, or justice of the peace, were termed those of the pueblo of San Francisco. Its privileges were not, therefore, at any time limited to the point of Yerba Buena. Originally, probably, it had boundaries in common with the mission of Dolores, which would restrict it in its four leagues; but after the conversion of the mission into a pueblo, the jurisdiction of the authorities of San Francisco was extended, and special license given to its principal magistrate to grant lots *at the mission*. San Francisco is situated on a tongue or neck of land, lying between the bay and the sea, increasing in breadth, in a southerly direction. A measurement of four leagues south from the presidio would give the city, in the present advanced value of property, a magnificent corporate domain, but not so much as was fairly assignable to the precincts of the presidio under the order of 1791, nor so much as all new pueblos are entitled to under the general laws of the Indias. There are private rights, however, existing within those limits, apart from any grants of the village authorities, which ought to be respected: some through grants from the former government; some by location and improvement, a claim both under our own law and custom, and under the Spanish law, entitled to respect. To avoid the confusion—the destruction—that would grow out of disturbing the multiplied and vast interests that have arisen under the acts of the American authorities at San Francisco; to give the city what she would certainly have been entitled to by the terms of the old law, what she will need for the public improvements and adornments that her future population will require, and what is well due to the enterprise which has founded in so brief a space a great metropolis in that remote region, perhaps no better or juster measure could be suggested, than a confirmation of past acts, a release of government claims to the extent of four leagues, measuring south from the presidio, and including all between sea and bay, with suitable provision for protecting private rights, whether under old grants or by recent improvements, and reserving such sites as the government uses may require.

By the authorities of the village of *San José*, there have been still larger operations in the lands belonging or supposed to belong to the liberties of that town. The outlands there, as I learned, have been distributed in tracts of three to five hundred acres.

The pueblo of San José was founded 7th November, 1777, by order of Felipe de Neve, then military commandant and governor. The first settlers were nine soldiers and five laboring men or farmers, who went thither, with cattle, tools, &c., from San Francisco, where had been established the year before, by order of the Viceroy, the presidio and the mission of Dolores. Those persons took possession, and made their settlement, "in the name of his Majesty, marking out the square for the erection of the houses; distributing the *solares* (house lots) and measuring to each settler a piece of ground for the sowing of a fanega of maize, (two hundred varas by four hundred,) and for beans and other vegetables."\* Subsequently, the Regulation of 1781, al-

\*Noticias de Nueva California, by the Rev. Father Palou: MSS. Archives of Mexico.

lowing to the new settlers each four lots of two hundred varas square, beside their house-lots, was no doubt applied to this village. It was designed for an agricultural settlement, and, together with the pueblo of the south (Los Angeles) received constantly the favor and encouragement of the government, with the view of having sufficient agricultural produce raised for the supply of the military posts. Both villages are situated in fertile plains, selected for their sites with that object. In a report, or information, made by the Governor Don Pedro Fages, in February, 1791, to his successor Governor Romeu, the encouragement of the two pueblos is the first topic referred to:

"1. Being (says Governor Fages) one of the objects of greatest consideration, the encouragement of the two pueblos, of civilized people, which have been established, the superior government has determined to encourage them with all possible aids, domiciliating in them the soldiers who retire from the presidios, and by this means enlarging the settlement.

"2. By the superior order of 27th April, 1784, it is ordered that the grains and other produce, which the presidios receive from the inhabitants of the two pueblos, shall be paid for in money, or such goods and effects as the inhabitants have need of.

"3. The distribution of lots of land, and house lots, made with all possible requisite formalities, with designation of town liberties, and other lands for the common advantage, as likewise titles of ownership given to the inhabitants, were approved by the Señor Commandante General, the 6th February of the present year of 1784."

There are also records of families being brought at the government expense, from the province of Sonora, specially to people the two pueblos. Both these villages—being thus objects of government favor and encouragement—claim to have been founded with more extensive privileges than the ordinary village limits; and I have no doubt, from the information I received, that such was the case.

The village of *San José* had a dispute of boundary as early as the year 1800, with the adjoining mission of Santa Clara, and which was referred the following year to the government at Mexico. The fact is noted in the index to California papers in the Mexican archives, but I did not find the corresponding record. There is likewise in the book of records, marked "1828," in the archives at Monterey, an outline of the boundaries claimed by the pueblo at that time. But at a later period, (in 1834, I believe,) there was a legislative action upon the subject, in which, as I understand, the boundaries were fully agreed upon. Some documents relating to this settlement are in the archives at San José, and also in the territorial archives. My time did not permit me to make a full investigation of the question of those boundaries, nor did I think it necessary, because, at all events, they can only be definitively settled by a survey, the same as private estates. My instructions, however, call for a discrimination between acts done "with legal formalities," and such as are "without legal sanction." It is therefore proper for me to say, that I do not know of any law which would authorize

the distribution of town property in California in lots measured by hundreds of acres; such distribution, in fact, would seem rather to defeat the ends for which town grants are authorized by the Spanish law. Perhaps an act to authorize the limits of the town to be ascertained by survey, and to leave the question of the validity of those recent large grants within the limits of the same, to be determined between the holders, and the town in its corporate capacity, would be as just and expedient as any other mode.

In and about the town of *Monterey*, likewise, there were large concessions, as I understood, and some including the sites of forts and public places, made by the magistrate appointed there after the accession of the American authority. The limits of this town, also, I think, depend on an act of the territorial legislature, and may be ascertained by an authorized survey.

The city of *Los Angeles* is one of the oldest establishments of California, and its prosperity was, in the same manner as that of San José, an object of Government interest and encouragement. An act of the Mexican Congress, of 23d May, 1835, erected it into a city, and established it as the capital of the territory. The limits which, I understood, are claimed as its town privileges, are quite large, but probably no more than it has enjoyed for sixty years, or ever since its foundation. The grants made by this corporation since the cessation of the former Government, have been, as far as I learned, quite in conformity with the Spanish law, in tracts such as were always granted for house lots in the village, and vineyards and gardens without, and in no greater number than the increase of population, and the municipal wants required.

The only provision that seems to be wanting for the puebla of Los Angeles, is for the survey and definition of its extent, according to its ancient recognised limits. The same remark, as far as I have learned, will apply to the remaining towns of the country established under either of the former Governments.

The remarks made in a previous part of this report in relation to the *Missions*, cover, to a good degree, the substance of that branch of the inquiries proposed by the Commissioner of the Land Bureau. I have already stated that, originally, the "mission lands" may be said to have been coëxtensive with the province, since, nominally, at least, they occupied the whole extent, except the small localities of the *Presidies*, and the part inhabited by the wild Indians, whom and whose territory it was their privilege to enter and reduce. Among the papers accompanying this report is included a transcript of their recorded boundaries, as stated in a record book heretofore noticed. It will be seen from the fact first mentioned, of their original occupation of the whole province, and from the vast territories accorded to their occupation, as late as the year 1828, how inconsistent with any considerable peopling of the country, would have been any notion of *propriety* in the missionaries.

I am also instructed to "make an inquiry into the nature of the *Indian Rights* [in the soil,] under the Spanish and Mexican governments."

It is a principle constantly laid down in the Spanish colonial laws, that the Indians shall have a *right* to as much land as they need for their habitations, for tillage, and for pasturage. Where they were already partially settled in communities, sufficient of the land which they occupied was secured them for those purposes.\* If they were wild, and scattered in the mountains and wildernesses, the policy of the law, and of the instructions impressed on the authorities of the distant provinces, was to reduce them, establish them in villages, convert them to Christianity, and instruct them in useful employments.† The province of California was not excepted from the operation of this rule. It was for this purpose especially, that the missions were founded and encouraged. The instructions heretofore quoted, given to the commandant of Upper California in August, 1773, enjoin on that functionary, that "the reduction of the Indians, in proportion as the spiritual conquests advance, shall be one of his principal cares;" that the reduction made, "and as rapidly as it proceeds, it is important for their preservation and augmentation, to congregate them in mission settlements, in order that they may be civilized and led to a rational life;" which, (adds the instructions,) "is impossible, if they be left to live dispersed in the mountains."

The early laws were so tender of these rights of the Indians, that they forbade the allotment of lands to the Spaniards, and especially the rearing of stock, where it might interfere with the tillage of the Indians. Special directions were also given for the selection of lands for the Indian villages, in places suitable for agriculture, and having the necessary wood and water.‡ The lands set apart to them were likewise inalienable, except by the advice and consent of officers of the government, whose duty it was to protect the natives as minors or pupils.||

Agreeably to the theory and spirit of these laws, the Indians in California were always supposed to have a certain property or interest in the missions. The instructions of 1773 authorized, as we have already seen, the commandant of the province to make grants to the mission Indians of lands of the missions, either in community or individually. But apart from any direct grant, they have been always reckoned to have a right of settlement; and we shall find that all the plans that have been adopted for the secularization of the missions, have contemplated, recognised, and provided for this right. That the plan of Híjar did not recognise or provide for the settlements of Indians was one of the main objections to it, urged by Gov. Figueroa and the territorial deputation. That plan was entirely discomfited; all the successive ones that were carried into partial execution, placed the Indian right of settlement amongst the first objects to be provided for. We may say, therefore, that, however mal-administration of the law may have de-

\* Recopilacion de Indias: laws 7 to 20, tit. 12, bk. 4.

† Ib., laws 1 and 9, tit. 3, bk. 6.

‡ Law 7, tit. 12, Recop. Indias; ib., laws 8 and 20, tit. 3, bk. 6.

|| Ib., law 27, tit. 6, bk. 1. Peña y Peña, 1 Practica Forense Mejicana, 248, &c. Alaman, 1 Historia de Mexico, 23-25.

stroyed its intent, the law itself has constantly asserted the rights of the Indians to habitations, and sufficient fields for their support. The law always intended the Indians of the missions—all of them who remained there—to have homes upon the mission grounds. The same, I think, may be said of the large ranchos—most, or all of which, were formerly mission ranchos—and of the Indian settlements or *rancherías* upon them. I understand the law to be, that wherever Indian settlements are established, and they till the ground, they have a right of occupancy in the land which they need and use; and whenever a grant is made which includes such settlements, the grant is subject to such occupancy. This right of occupancy, however—at least when on private estates—is not transferable; but whenever the Indians abandon it, the title of the owner becomes perfect. Where there is no private ownership over the settlement, as where the lands it occupies have been assigned it by a functionary of the country thereto authorized, there is a process, as before shown, by which the natives may alien their title. I believe these remarks cover the principles of the Spanish law, in regard to Indian settlements, as far as they have been applied in California, and are conformable to the customary law that has prevailed there.\*

The continued observance of this law, and the exercise of the public authority to protect the Indians in their rights under it, cannot, I think, produce any great inconvenience; while a proper regard for long recognised rights, and a proper sympathy for an unfortunate and unhappy race, would seem to forbid that it should be abrogated, unless for a better. The number of subjugated Indians is now too small, and the lands they occupy too insignificant in amount, for their protection, to the extent of the law, to cause any considerable molestation. Besides, there are causes at work by which even the present small number is rapidly diminishing; so that any question concerning them can be but temporary. In 1834, there were employed in the mission establishments alone the number 30,650.† In 1842, only about eight years after the restraining and compelling hand of the missionaries had been taken off, their number on the missions had dwindled to 4,450; and the process of reduction has been going on as rapidly since.

In the wild or wandering tribes, the Spanish law does not recognise any title whatever to the soil.

It is a common opinion, that nearly all of what may be called the coast country—that is, the country west of the Sacramento and Joaquin valleys—which lies south of, and including, the Sonoma district, has been ceded, and is covered with private grants. If this were the case,

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\* Of course, what is here said of the nature of Indian rights, does not refer to titles to lots and farming tracts, which have been granted in ownership to individual Indians by the government. These, I suppose, to be entitled to the same protection as other private property.

† This is not an *estimate*, it is an exact statement. The records of the missions were kept with system and exactness; every birth, marriage, and death was recorded, and the name of every pupil or *neophyte*, which is the name by which the mission Indians were known; and from this record, an annual return was made to the government of the precise number of Indians connected with the establishment.



it would still leave the extensive valleys of those large rivers and their lateral tributaries, almost intact, and a large extent of territory—from three to four degrees of latitude—at the north, attached to the public domain, within the State of California, beside the gold region, of unknown extent, along the foothills of the Sierra Nevada. But while it may be nominally the case, that the greater part of the coast country referred to is covered with grants, my observation and information convince me, that when the country shall be surveyed, after leaving to every grantee all that his grant calls for, there will be extensive and valuable tracts remaining. This is explained by the fact that the grants were not made by measurement, but by a loose designation of boundaries, often including a considerably greater extent of land than the quantity expressed in the title; but the grant usually provides that the overplus shall remain to the government. Although, therefore, the surveys, cutting off all above the quantity expressed in the grant, would often interfere with nominal occupation, I think justice would generally be done by that mode to all the interests concerned—the holders of the grants, the Government, and the wants of the population crowding thither. To avoid the possibility of an injustice, however, and to provide for cases where long occupation or peculiar circumstances may have given parties a title to the extent of their nominal boundaries, and above the quantity expressed in their grants, it would be proper to authorize any one who should feel himself aggrieved by this operation of the survey, to bring a suit for the remainder.

The grants in California, I am bound to say, are mostly *perfect titles*; that is, the holders possess their property by titles, that, under the law which created them, were equivalent to patents from our Government; and those which are not perfect—that is, which lack some formality, or some *evidence* of completeness—have the same *equity*, as those which are perfect, and were and would have been equally respected under the government which has passed away. Of course, I allude to grants made in good faith, and not to simulated grants, if there be any such, issued since the persons who make them ceased from their functions in that respect.

I think the state of land titles in that country will allow the public lands to be ascertained, and the private lands set apart, by judicious measures, with little difficulty. Any measure calculated to discredit, or cause to be distrusted, the general character of the titles there, besides the alarm and anxiety which it would create among the ancient population, and among all present holders of property, would, I believe, also retard the substantial improvement of the country: a title discredited is not destroyed, but every one is afraid to touch it, or at all events to invest labor and money in improvements that rest on a suspected tenure. The holder is afraid to improve; others are afraid to purchase, or if they do purchase at its discredited value, willing only to make inconsiderable investments upon it. The titles not called in question, (as they certainly, for any reason which I could discover, do not deserve to be,) the pressure of population, and the force of circumstances, will soon

operate to break up the existing large tracts into farms of such extent as the nature of the country will allow of, and the wants of the community require; and this under circumstances, and with such assurance of tenure, as will warrant those substantial improvements that the thrift and prosperity of the country in other respects invite.

I think the rights of the Government will be fully secured, and the interests and permanent prosperity of all classes in that country best consulted, by no other general measure in relation to private property, than an authorized survey, according to the grants, where the grants are modern, or since the accession of the Mexican government, reserving the overplus; or, according to ancient possession, where it dates from the time of the Spanish government, and the written evidence of the grant is lost, or does not afford data for the survey. But providing that in any case where, from the opinion of the proper law officer or agent of the Government in the State, or from information in any way received, there may be reason to suppose a grant invalid, the Government (or a proper officer of it) may direct a suit to be instituted for its annulment.

It is proper for me to say, that at Monterey, Gen. Riley, then in charge of the government, promptly directed the archives to be open to my inspection; and that in Mexico, my application, made by Mr. Walsh, chargé d'affaires of the United States, to be allowed to examine the Mexican archives, was courteously received and acceded to by Mr. de Lacunza, the Minister of the Interior and Foreign Relations. I received, also, from Col. Geary, principal magistrate of San Francisco, unusual facilities for acquainting myself with the papers in his office, relating to that city.

Very respectfully, sir, your obedient servant,

WM. CAREY JONES.

WASHINGTON, *9th March*, 1850.



## SOME OF THE PRINCIPAL LAWS AND ORDERS RELATING TO THE SUBJECT OF THE FOREGOING REPORT.

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### TREATY PROVISIONS RESPECTING PRIVATE PROPERTY IN CALIFORNIA.

*Portions of the treaty of 2d February, 1848, which relate to PRIVATE PROPERTY, existing in the territories thereby acquired by the United States.*

Art. VIII. Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax or charge whatsoever. \* \* \* \* \*

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with respect to it, guaranties equally ample as if the same belonged to citizens of the United States.

Art. IX. Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

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### MEXICAN COLONIZATION LAWS AND RULES.

*Act of the Mexican government, 4th January, 1823.*

Art. 1. The government of the Mexican nation will protect the liberty, property, and civil rights of all foreigners, who profess the Roman Catholic apostolic religion, the established religion of the empire.

Art. 2. To facilitate their establishment, the executive will distribute lands to them, under the conditions and terms herein expressed.

Art. 3. The empresarios, by whom is understood those who introduced at least two hundred families, shall previously contract with the executive, and inform it what branch of industry they propose to follow,

the property or resources they intend to introduce for that purpose, and any other particulars they may deem necessary, in order that with this necessary information, the executive may designate the province to which they must direct themselves, the lands which they can occupy with the right of property, and the other circumstances which may be considered necessary.

Art. 4. Families who emigrate, not included in a contract, shall immediately present themselves to the ayuntamiento of the place where they wish to settle, in order that that body, in conformity with the instructions of the executive, may designate the lands corresponding to them, agreeably to the industry which they may establish.

Art. 5. The measurement of land shall be the following: establishing the *vara* at three geometrical feet; a straight line of five thousand *varas* shall be a league; a square, each of whose sides shall be one league, shall be called a sitio; and this shall be the unit of counting one, two, or more sitios; five sitios shall compose one hacienda.

Art. 6. In the distribution made by government of lands to the colonists, for the formation of villages, towns, cities, and provinces, a distinction shall be made between the grazing lands destined for the raising of stock, and lands suitable for farming or planting, on account of the facility of irrigation.

Art. 7. One *labor* shall be composed of one million square *varas*, that is to say, one thousand *varas* on each side, which measurement shall be the unit for counting one, two, or more labors. These labors can be divided into halves and quarters, but not less.

Art. 8. To the colonists, whose occupation is farming, there cannot be given less than one labor, and those whose occupation is stock raising, there cannot be given less than one sitio.

Art. 9. The government of itself, or by means of the authorities authorized for that purpose, can augment said portions of land as may be deemed proper, agreeably to the conditions and circumstances of the colonists.

Art. 10. Establishments made under the former government shall be regulated by this law in all matters that may arise, and that are now pending; but those that are finished shall remain in that state.

Art. 11. As one of the principal objects of laws in free governments, ought to be to approximate, so far as possible, to an equal distribution of property, the government, taking into consideration the provisions of this law, will adopt measures for dividing out the lands, which may have accumulated in large portions in the hands of individuals or corporations, and which are not cultivated, indemnifying the proprietors for the just price of such lands, to be fixed by appraisers.

Art. 12. The union of many families at one place shall be called a village, town, or city, agreeably to the number of its inhabitants, its extension, locality, and other circumstances which may characterise it, in conformity with the law on that subject. The same regulations for its internal government and police, shall be observed as in the others of the same class in the empire.

Art. 13. Care shall be taken in the formation of said new town, that, so far as the situation of the ground will permit, the streets shall be laid off straight, running north and south, east and west.

Art. 14. Provinces shall be formed, whose superficie shall be six thousand square leagues.

Art. 15. As soon as sufficient number of families may be united to form one or more towns, their local government shall be regulated, and the constitutional ayuntamientos and other local establishments formed in conformity with the laws.

Art. 16. The government shall take care, in accord with the respective ecclesiastical authority, that these new towns are provided with a sufficient number of spiritual pastors, and in like manner, it will propose to Congress a plan for their decent support.

Art. 17. In the distribution of lands for settlement among the different provinces, the government shall take care that the colonists shall be located in those which it may consider the most important to settle. As a general rule, the colonists who arrive first, shall have the preference in the selection of land.

Art. 18. Natives of the country shall have a preference in the distribution of land, and particularly the military of the army of the three guarantees, in conformity with the decree of the 27th of March, 1821; and also those who served in the first epoch of the insurrection.

Art. 19. To each empresario who introduces and establishes families in any of the provinces designated for colonization, there shall be granted at the rate of three haciendas and two labors, for each two hundred families so introduced by him, but he will lose the right of property over said lands, should he not have populated and cultivated them in twelve years from the date of the concession. The premium cannot exceed nine haciendas, and six labors, whatever may be the number of families he introduces.

Art. 20. At the end of twenty years the proprietors of the lands, acquired in virtue of the foregoing article, must alienate two thirds part of said lands, either by sale, donation, or in any other manner he pleases. The law authorizes him to hold in full property and dominion one third part.

Art. 21. The two foregoing articles are to be understood as governing the contracts made within six months, as after that time, counting from the day of the promulgation of this law, the executive can diminish the premium as it may deem proper, giving an account thereof to Congress, with such information as may be deemed necessary.

Art. 22. The date of the concession for lands constitutes an inviolable law, for the right of property and legal ownership; should any one through error, or by subsequent concession, occupy land belonging to another, he shall have no right to it, further than a preference in case of sale, at the current price.

Art. 23. If after two years from the date of the concession, the colonist should not have cultivated his land, the right of property shall be considered as renounced; in which case, the respective ayuntamiento can grant it to another.

Art. 24. During the first six years from the date of the concession, the colonists shall not pay tithes duties on their produce, nor any contribution under whatever name it may be called.

Art. 25. The next six years from the same date, they shall pay half tithes, and the half of the contributions, whether direct or indirect, that are paid by the other citizens of the empire. After this time, they shall in all things, relating to taxes and contributions, be placed on the same footing with other citizens.

Art. 26. All the instruments of husbandry, machinery, and other utensils, that are introduced by the colonists for their use, at the time of their coming to the empire, shall be free, as also the merchandise introduced by each family, to the amount of two thousand dollars.

Art. 27. All foreigners who come to establish themselves in the empire, shall be considered as naturalized, should they exercise any useful profession or industry, by which, at the end of three years, they have a capital to support themselves with decency, and are married. Those who, with the foregoing qualifications, marry Mexicans, will acquire special merit, for the obtaining letters of citizenship.

Art. 28. Congress will grant letters of citizenship to those who solicit them, in conformity with the constitution of the empire.

Art. 29. Every individual shall be free to leave the empire, and can alienate the lands over which he may have acquired the right of property, agreeably to the tenor of this law, and he can likewise take away from the country all his property, by paying the duties established by law.

Art. 30. After the publication of this law, there can be no sale or purchase of slaves which may be introduced into the empire. The children of slaves born in the empire shall be free at fourteen years of age.

Art. 31. All foreigners who may have established themselves in any of the provinces of the empire, under a permission of the former government, will remain on the lands which they may have occupied, being governed by the tenor of this law, in the distribution of said lands.

Art. 32. The executive, as it may conceive necessary, will sell or lease the lands, which, on account of their local situation, may be the most important, being governed with respect to all others by the provisions of this law.

[The above law was suspended by an order of 11th April, 1823, in the following words: "Is suspended until a new resolution, the colonization law enacted by the *Junta Instituyente*." It had previously, however, been forwarded to California, where it was officially published, 14th July, 1823.]

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*Decree of the Mexican Congress, of 18th August, 1824, on Colonization.*

The sovereign general constituent Congress of the United Mexican States has held it proper to decree:

1. The Mexican nation offers to foreigners, who shall come to establish themselves in its territory, security in their persons and in their pro-

perty; provided, that they subject themselves to the laws of the country.

2. Constitute the object of this law, those lands of the nation, which, not being private property, nor belonging to any corporation or town, may be colonized.

3. To this effect, the Congress of the States shall form, with the least delay, laws or rules of colonization for their respective limits, conforming themselves in all respects to the constitutive act,\* the general constitution, and the rules established in this law.

4. Shall not be colonized those territories comprehended within twenty leagues of the boundaries with any foreign nation, nor within ten leagues of the seacoast, (*literales*,) without the previous approbation of the supreme general executive power.

5. If for the defence or security of the nation the government of the federation should find it expedient to make use of any portion of those lands to construct warehouses, arsenals, or other public edifices, it may do so with the approbation of the general Congress, or in its recess with that of the government council.

6. There shall not, before the expiration of four years from the publication of this law, be imposed any duty on the entrance of the persons of foreigners who shall come to establish themselves for the first time in the nation.

7. Prior to the year 1840, the general Congress shall not prohibit the entrance of foreigners to colonize, except imperious circumstances oblige it so to do with respect to the individuals of some (particular) nation.

8. The government, without prejudicing the objects of this law, shall take the measures of precaution which it may judge proper for the security of the federation with respect to foreigners who come to colonize.

9. In the distribution of lands, Mexican citizens are to be preferred, and between them no distinction shall be made, except such only as is due to special merit and services rendered to the country, or, in equality of circumstances, residence in the place to which the lands to be distributed are pertinent.

10. Military persons who, agreeably to the proffer of 27th March, 1821, may be entitled to lands, shall be attended to in the States, on exhibiting the diplomas which to this effect the supreme executive authority shall deliver to them.

11. If by the decrees of *capitalization*† according to the probabilities of life, the supreme executive power should think proper to alienate some portions of land in favor of any officers of the federation, either civil or military, it may do so of the vacant lands in the territories.

12. It shall not be permitted to unite in one hand as property more than one league square of five thousand varas of irrigable land, four in superficies of farming land not irrigable (*de temporal*,) and six in superficies for stock raising (*de abrevadero*.)

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\* Acta Constitutiva de la Federacion, adopted 31st January, 1824.

† *Capitalizacion* signifies the turning of an income, rent or annuity, into a capital.



13. The new settlers shall not transfer their property in *mortmain*.

14. This law guaranties the contracts which empresarios shall make with families whom they bring at their own expense, provided that they be not contrary to the laws.

15. No one who by virtue of this law shall acquire lands in ownership, shall be able to preserve them, being domiciliated without the territory of the Republic.

16. The government, conformably to the principles established in this law, shall proceed to the colonization of the territories of the Republic.

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*Government Regulations for the Colonization of the Territories, pursuant to the preceding law, adopted 21st November, 1828.*

It being provided in the 16th article of the general colonization law of the 18th August, 1824, that the Government, in conformity with the principles established in said law, shall proceed to the colonization of the territories of the Republic; and it being desirable, in order to give to said article the most punctual and exact fulfilment, to dictate some general rules for facilitating its execution in such cases as may occur, his Excellency has seen fit to determine on the following articles:

1st. The Governors (gefes politicos) of the territories are authorized, (in compliance with the law of the general congress of the 18th of August, 1824, and under the conditions hereafter specified,) to grant vacant lands in their respective territories, to contractors, (*empresarios*), families, or private persons, whether Mexicans or foreigners, who may ask for them for the purpose of cultivating or inhabiting them.

2d. Every person soliciting lands, whether he be an *empresario*, head of a family, or private person, shall address to the Governor of the respective territory a petition, setting forth his name, country, profession, the number, description, religion, and other circumstances of the families, or persons with whom he wishes to colonize, describing, as distinctly as possible, by means of a map, the land asked for.

3d. The Governor shall proceed immediately to obtain the necessary information whether the petition embraces the conditions required by said law of the 18th August, both as regards the land and the candidate, in order that the petitioner may at once be attended to, or if it be preferred, the respective municipal authority may be consulted, whether there be any objection to making the grant.

4th. This being done, the Governor will accede or not to said petition, in exact conformity to the laws on the subject, and especially to the before mentioned one of the 18th of August, 1824.

5th. The grants made to families, or private persons, shall not be held to be definitively valid without the previous consent of the territorial deputation; to which end the respective documents (*expedientes*) shall be forwarded to it.

6th. When the Governor shall not obtain the approbation of the territorial deputation, he shall report to the Supreme Government, forwarding the necessary documents for its decision.

7th. The grants made to *empresarios* for them to colonize with many families, shall not be held to be definitively valid until the approval of the Supreme Government be obtained, to which the necessary documents must be forwarded, along with the report of the territorial deputation.

8th. The definitive grant asked for being made, a document, signed by the Governor, shall be given to serve as a title to the party interested, wherein it must be stated, that said grant is made in exact conformity with the provisions of the laws, in virtue whereof possession shall be given.

9th. The necessary record shall be kept in a book prepared for the purpose, of all the petitions presented, and grants made, with the maps of the land granted, and a circumstantial report shall be forwarded quarterly to the Supreme Government.

10th. No stipulation shall be admitted for a new town, except the contractor bind himself to present as colonists at least twelve families.

11th. The Governor shall designate to the new colonist a proportionate time within which he shall be bound to cultivate or occupy the land, on the terms, and with the number of persons or families, which he may have stipulated for; it being understood that, if he does not comply, the grant of the land shall remain void. Nevertheless, the Governor may revalidate it in proportion to the part which the party may have fulfilled.

12th. Every new colonist, after having cultivated or occupied the land agreeably to his stipulation, will take care to prove the same before the municipal authority, in order that the necessary record being made, he may consolidate and secure his right of ownership, so that he may dispose freely thereof.

13th. The union of many families into one town shall follow in its formation, interior government and policy, the rules established by the existing laws of the other towns of the republic, special care being taken that the new ones shall be built with all possible regularity.

14th. The *minimum* of irrigable land to be given to one person for colonization, shall be two hundred varas square. The *minimum* of land called *de temporal*, (that is, dependent on the seasons, or not irrigable,) shall be eight hundred varas square; and the *minimum* for breeding cattle (*de abrevadero*) shall be twelve hundred varas square.

15th. The land given for a house lot shall be one hundred varas.

16th. The spaces which may remain between the colonized lands may be distributed among the adjoining proprietors, who shall have cultivated theirs with the greatest application, and have not received the whole extent of land allowed by the law; or to the children of said proprietors, who may ask for them to combine the possessions of their families; but in this respect particular attention must be paid to the morality and industry of the parties.

17th. In those territories where there are missions, the lands occupied by them cannot be colonized by them at present, nor until it is determined whether they are to be considered as the property of the establishments of the neophytes-catechumens, and Mexican colonists.

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*Decree of 4 November, 1833.*

Art. 1. Shall be repealed in all its parts, the 11th article of the law of 6th April, 1830.\*

Art. 2. The Government is authorized to expend the sums that may be necessary in the colonization of the territories of the Federation, and other vacant places which it has the right to colonize.

Art. 3. It is also authorized, that with respect to colonizable lands, it may take such measures as it believes conducent to the safety, better progress, and stability of the colonies which shall be established.

Art. 4. The repeal spoken of in article 1 of this decree, shall not take effect until six months have expired after its publication.

Art. 5. In the authorization conceded in article 2, is comprehended that of raising fortresses at those points of the frontiers where the executive may think them useful and expedient.

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DECREE OF THE SPANISH CORTES OF FOURTH JANUARY, 1813.

On reducing vacant and other common lands to private ownership, lots conceded to the defenders of the country, and to citizens not proprietors.

The general and extraordinary Cortes, considering that the reduction of common lands to private ownership is one of the measures most imperiously required for the weal of the pueblos, and the encouragement of agriculture and industry, and wishing at the same time to provide, with that class of lands, some help to the public necessities, a reward to well-meriting defenders of the country, and succor to citizens who are not proprietors, decree:

I. All vacant or royal lands, and lands for municipal uses (*terrenos baldios ó realengos, y de propiös y arbitrios*,†) both in the peninsula

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\* The act of 6th April, 1830, relates principally to the admission of cotton fabrics into Texas, and the colonization of that State. The 11th article above repealed is as follows:

“11. In exercise of the power which is reserved to the General Congress in article 7 of the law of 18th August, 1824, the colonization of foreigners of adjacent countries in those States and Territories of the Federation which are coterminant with their nations, is prohibited. In consequence, the contracts which have not been fulfilled, and which are opposed to this law, are suspended.

† “*Propios* are the hereditaments, meadows, houses, or other possessions whatsoever, which a city, town, or place has for its public expenses; and *arbitrios* signify those duties or taxes which, in default of *propios*, a place imposes, with competent authorization, on certain products or industry.”—*Escrache: 2 Diccionario de Leyes*, 770.

and adjacent islands, and in the provinces beyond sea, except the commons necessary to villages, shall be reduced to private property; provided that, in the lands for municipal uses, their annual rents shall be supplied by the most proper means, which, proposed by the respective provincial deputations, shall be approved by the Cortes.

II. In whatever mode those lands shall be distributed, it shall be in full and separate ownership, (*plena propiedad, y en clase acotados*,) so that their owners may enclose them, (without prejudice to the paths, crossings, watering places, and servitudes,) enjoy them freely and exclusively, and appropriate them to the use or cultivation they are adapted to; but they shall not be able to entail them, nor to transfer them, at any time, or in any manner, in *mortmain*.

III. In the alienation of said lands, shall be preferred the inhabitants of the villages within the limits of which they exist, and who enjoyed them in common while vacant.

IV. The provincial deputations shall propose to the Cortes, by medium of the regency, the time and manner most suitable to carry this provision into effect in their respective provinces, according to the circumstances of the country, and the tracts which may be indispensable to preserve to the pueblos, in order that the Cortes may determine that which shall be most fitting to each territory.

V. This point is recommended to the zeal of the regency of the kingdom, and to the two secretaries of government, in order that they may advise and enlighten the Cortes when presenting to them the propositions of the provincial deputations.

[Articles 6, 7, 8, 9, 10, 11, 12, 13, 14, relate to a reservation of one-half the lands of the monarchy to be hypothecated for the national debt, and to the making of concessions to the military and others who should assist, in the existing war, in the defence of the nation.]

XV. Of the said remaining vacant and royal lands, shall be assigned the most fitting for cultivation, and to each inhabitant of the respective pueblos who ask it, and has not other land of his own, shall be given gratuitously, by lot, a parcel proportioned to the extent of the tract; provided that all that may be thus distributed shall not exceed one-fourth part of said vacant and royal lands; and if there shall not be sufficient, the lot shall be given in the sowing grounds of the municipal lands, imposing on it, in such case, a redeemable tax equivalent to the rent of the same for the period of five years, unto the end of 1817, so that the municipal funds shall not fail.

XVI. If any grantee under the preceding article fail for two years to pay the tax, (his lot being of the municipal lands,) or to put his lot to use, it shall be given to another more industrious inhabitant, who may lack land of his own.

XVII. The measures necessary for these concessions shall be made, likewise without any charges, by the ayuntamientos, and the provincial deputations shall approve them.

XVIII. All the lots which shall be conceded conformably to articles IX, X, XII, XIII, and XV, shall likewise be in full ownership to the

grantees and their successors, in the terms and with the powers expressed in article II; but the owners of these lots shall not have power to alienate them within four years from the time they are conceded, nor subject them ever to entail, nor transfer them at any time or by any title, in *mortmain*.

XIX. The said grantees, or their successors, who shall establish their permanent habitations on the said lots, shall be exempt for eight years from any contribution or impost on that ground or its products.

#### ACTS GOVERNING THE EARLY SETTLEMENT OF CALIFORNIA.

Extracts from the "Instructions to be observed by the commandant of the new establishments of San Diego and Monterey," given by the Viceroy, 17th August, 1773.

Art. 5. The reduction of the Indians in proportion as the spiritual conquest may advance, is one of the principal cares of the commandant, and in which the missionaries ought to make the greatest efforts, the commandant giving the necessary assistance.

Art. 6. The reduction of the Indians accomplished, and in proportion as it may be accomplished, it is important for their preservation and increase that they should be congregated in mission pueblos, in order that they may be civilized and led to a rational life, which experience has shown can scarcely be done if they be left to live dispersed in the mountains.

Art. 7. The place in which the mission settlement is to be made, ought to be selected, if possible, where it will not be exposed to inundations, but have sufficient of water to drink and for irrigation of the fields, with hills and woods near by to furnish fire-wood and house timbers.

Art. 8. In the construction of the houses the Indians shall be taught, in order that they may know how to build them, whether of adobe, or of stone and mortar, conformably to the proportions which the tract of land offers, and that the whole shall have capacity for a garden, where the Indians shall sow some seeds and herbs, and plant trees, that, at the proper time, will reward their owners with their fruits; thus holding them with constancy to the place, and restraining their propensity to wander.

Art. 9. All settlements begin with few families, and afterwards increase to contain large cities; and in those where defects are not remedied from the beginning, they grow disproportioned, and without suitable symmetry.

Art. 10. As the mission settlements are hereafter to become cities, care should be taken in their foundation that the houses should be built in line, with wide streets and good market squares; by this means will not only be obtained symmetry, but the desire of the Indians will be

excited not to withdraw; and even those not reduced may be reclaimed and drawn to establish themselves, and adopt a rational life.

Art. 11. For the preservation of the new mission settlements, it is very essential that near them should be encouraged the raising of cattle, cultivation and the planting of trees, and for this purpose to choose suitable lands, and on all to bestow strict attention.

Art. 12. With the desire that population may be more speedily assured in the new establishments, I, for the present, grant the commandant power to designate common lands, and also even to make individual concessions to such Indians as may most dedicate themselves to agriculture, and the raising of cattle, for, having property of their own, the love of it will cause them to plant themselves more firmly; but the commandant must bear it in mind, that it is very adviseable not to allow them to live dispersed, each on the land given him, but that they must have their house and habitation in the town or mission where they have been gathered or settled.

Art. 13. I grant the same faculty to the commandant with respect to distributing lands to the other settlers, (*pobladores*,) according to their merit and ability to improve; they also living in the town, and not dispersed; declaring, that in the exercise of what is prescribed in this article and the preceding, he must act in every respect in conformity with the provisions made in the collection of laws respecting new reductions and settlements, granting them legal titles for the owner's protection without exacting any remuneration therefor, or for the act of possession.

Art. 15. When it becomes expedient to change any mission into a pueblo, the commandant will proceed to reduce it to the civil and economical government which, according to the laws, is observed in the other pueblos of this kingdom, giving it a name, and declaring for its patron the saint under whose auspices and venerable protection the mission was founded.

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Extract from the "Regulation and Instruction for the Presidios of the Peninsula of Californias, the erection of New Missions, and encouragement of the Population and extension of the Establishments of Monterey." Drawn by Governor Felipe de Neve, 1st June, 1779, and approved by a royal cedula of 14th October, 1781.

TITLE XIV.—*Political government and instructions for Peopling.*

[Art. 1. Relates to the importance of encouraging the reduction and conversion of the Indians, and the establishment of settlements of civilized persons, in order to retain the dominion of the country and render it useful to the State. 2. Prescribes a different mode of payment of the premiums theretofore granted to settlers in money and rations. 3. Provides for supplying the new settlers with stock and with agricultural implements.]

4th. The house lots to be granted to the new settlers shall be desig-

nated by the governor in the places and of the extent correspondent to the tract where the new pueblos are to be established, in such manner that streets and a square shall be formed, according to the provisions of the laws of the kingdom, and agreeably to the same, competent common lands (*egidos*) shall be designated for the pueblos, and pasture grounds with suitable sowing lands, for municipal purposes (*propios*.)

5th. Each *suerte* of land (out-lot) whether capable of irrigation (*de riego*) or dependent on the seasons, (*de temporal*.) shall consist of two hundred varas in length by two hundred in breadth, this being the area generally occupied in the sowing of one fanega of Indian corn; the distribution of these house lots and pieces of land to the new settlers shall be made in the name of the King our master by the government, with equity, and in proportion to the ground which admits of irrigation, so that after making the necessary demarcation, and reserving vacant the fourth part of the number which may result, counting with the number of settlers, should there be sufficient, each one shall have two *suertes* of irrigable land, and other two of dry ground, delivered to him; and of the royal lands (*realengos*) as much as may be considered necessary shall be separated for the *propios* of the pueblo; and of the remainder, as well as of the house lots, shall be granted in the name of H. M. by the governor, to those who may hereafter come to colonize, and particularly to soldiers, who having fulfilled the term of their engagement, or on account of advanced age may retire from service, and likewise to the families of those who may die; but these persons must make their improvements at their own expense, out of the funds which each possesses, and will not be entitled to receive from the royal revenue either salary, rations, or cattle, this privilege being limited to those who leave their own country for the purpose of peopling this.

6th. The houses built on lots granted and designated to the new settlers, and the parcels of land comprehended in their respective concessions, shall be perpetually hereditary to their sons and descendants, or to their daughters, who marry useful colonists who have received no grants of land for themselves; provided they all comply with the obligations expressed in these instructions; and in order that the sons of the possessors of these concessions, observe the obedience and respect which they owe to their parents, the latter shall be freely authorized, in case of having two or more sons, to choose which of them, being a layman, shall succeed to the house and lots, and they may likewise dispose of them among their children, but not so as to divide a single lot, because each and all of these are to remain indivisible and inalienable forever.

7th. Neither can the pobladores, nor their heirs, impose on the house or parcels of land granted to them, either tax, entail, reversion, mortgage, (*censo, vinculo, fianza, hipoteca*.) or any other burthen, although it be for pious uses; and should any one do so in violation of this just prohibition, he shall be deprived of his property, and his grant shall by said act be given to another colonist who may be serviceable and obedient.

8th. The new colonists shall enjoy for the maintenance of their cattle, the common use of the water and pasturage, firewood and timber of the commons, forest, and meadows, to be designated according to the laws to each new pueblo, and besides each one shall separately enjoy the pasture of his own lands.

9th. The new colonists shall be exempt for a term of four years from tithes, or any other tax on the fruits and produce of the lands and cattle given to them, provided that within a year from the day on which the house lots and parcels of land be designated to them, they build a house in the best way they can, and live therein; open the necessary trenches for watering their land, placing at the boundaries, instead of land marks, some fruit trees, or wild ones of some use, at the rate of ten to each out-lot, and likewise open the principal drain or trench, construct a dam, and the other necessary public works for the benefit of tillage, which the community is bound particularly to attend to; and said community shall see that the government buildings (*casas reales*) be completed within the fourth year, and during the third a store-house for a public granary, in which must be kept the produce of the public sowing which at the rate of one almud (the twelfth of a fanega) of maize per inhabitant, must be made from said third year to the fifth inclusive, in the lands designated for municipal purposes (*propios*.)

10th. After the expiration of the five years they will pay the tithes to H. M. for him to dispose of agreeably to his royal pleasure, as belonging solely to him not only on account of the absolute royal patronage which he possesses in those dominions, but also because they are new, (*novales*) being the produce of lands hitherto uncultivated and waste, which are about to become fruitful at the cost of the large outlays and expenses of the royal treasury. At the expiration of the said term of five years, the new settlers and their descendants will pay, in acknowledgment of the direct and supreme dominion which belongs to the sovereign, one-half of a fanega of Indian corn for each irrigable suerte of land for their own benefit; they shall be collectively under the direct obligation of attending to the repair of the principal trench, dam, auxiliary drains, and other public works of their pueblos, including that of the church.

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#### GRANTS BY THE CAPTAINS OF PRESIDIOS.

##### *Instruction from the Commandant General of the Internal Provinces of the West to the Commandant of California.*

In conformity with the opinion of the solicitor of this *Commandancia General*, I have determined, in a decree of this date, that notwithstanding the provisions made in the 18th article of the ordinance of



*Intendants*,\* the captains of presidios are authorized to grant and distribute house lots and lands to the soldiers and citizens, who may solicit them to fix their residences on. And considering the extent of four common leagues, measured from the centre of the presidio square, viz., two leagues in every direction, to be sufficient for the new pueblos, to be formed under the protection of said presidios, I have likewise determined, in order to avoid doubts and disputes in future, that said captains restrict themselves henceforward to the quantity of house lots and lands within the said four leagues, without exceeding, in any manner, said limits, leaving free and open the exclusive jurisdiction belonging to the managers of the royal hacienda respecting the sale, composition, and distribution of the remainder of the lands in the respective district. And that this order may be punctually observed and carried into effect, you will circulate it to the captains and commandants of the presidios of your province, informing me of having done so.

God preserve you many years.

Chihuahua, *March 22, 1791.*

PEDRO DE NAVA.

SEÑOR DON JOSEPH ANTONIO ROMAN, *Monterey.*

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#### SECULARIZATION OF MISSIONS.

*Decree of the Spanish Cortes, 13th September, 1813.*

That the settlements of Indians converted to Christianity by the monks in the provinces beyond sea, shall be delivered to and remain at the disposition of the ordinaries (bishops.)

I. All the new reductions and *doctrinas* (missions) of ultramar, which are in charge of missionary monks, and shall have been ten years reduced, shall be immediately delivered to the respective ecclesiastical ordinaries, without any excuse or pretext, according to the laws in that respect.

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\*The following is the article referred to, to wit, Art. 81, of the *Ordenanza de Intendentes*, of 4th December, 1786. (The preamble to this ordinance divides the kingdom of New Spain into twelve intendencies, expressly excluding, however, the Californias.)

"The intendants shall also be the exclusive judges of the causes and questions that may arise in the district of their provinces, about the sale, composition, and granting of royal lands, and of seignior, it being required of their possessors and of those who pretend to new grants of them, to produce their rights and institute their claims before the said intendants, so that these matters, being legally prepared in conjunction with a promoter of my royal treasury whom they may appoint, may be decided upon, the opinion of the ordinary assessor being heard, and they may admit appeals to the superior junta de hacienda; or, if the parties interested do not appeal, they shall communicate to said junta, for its information, the original proceedings, when they shall judge these proceedings ready for the issuing of the title; which, after examination by the junta, shall be returned, and the title issued, unless some difficulty occur; and then, before executing it, the measures found to be neglected by the junta shall be observed. The proper confirmations shall, in consequence, be furnished by the same superior junta, in due time, which shall proceed in the case, as also the intendants, their sub-delegates, and others, in conformity with the royal regulation of the 15th of October, 1754, as far as it may not be opposed to the requirements of this ordinance, without losing sight of the wise dispositions of the laws cited therein, and of law 9th, title 12, lib. 4."

II. Both these *doctrinas*, and all others that shall be erected into curacies, shall be provided canonically by the said ordinaries, observing the laws and cédulas of the royal advowson, with fit ministers of the secular clergy.

III. The missionary monks, relieved from the reduced pueblos, thus delivered to the ordinary, shall apply themselves to extend religion in other unreduced places, for the advantage of their inhabitants, proceeding in the exercise of their missions conformably to the direction in paragraph 10, art. 335, of the Constitution.

IV. The reverend bishops and ecclesiastical prelates, in virtue of the ordinary jurisdiction which belongs to them, shall have power, as they may judge proper, to appoint capable monks temporarily to fill the curacies of the secular parishes, where it may be necessary; but provided that they shall never aspire to the possession of the parish, nor continue in its service longer than the ordinary may require, conformably to the laws.

V. [Provides that, until otherwise ordered, the monks then in charge of curacies should continue the same.]

VII. The missionary monks shall cease immediately from the government and administration of the property of those Indians, leaving to their charge and election to dispose of it through the medium of their ayuntamientos, and with intervention of the superior political authority, to name among themselves persons to their satisfaction, and who shall have most intelligence to administer it; the lands being distributed and reduced to private property, conformably to the decree of 4th January, 1813, on reducing vacant and other lands to private ownership.

*Decree of the Mexican Congress, of 17th August, 1833.*

**On the Secularization of the Missions of Upper and Lower California.**

ART. 1. The Government will proceed to secularize the missions of Upper and Lower California.

Art. 2. In each of said missions a parish shall be established under the charge of a parish priest of the secular clergy, with a salary of from \$2,000 to \$2,500 per annum, at the discretion of the Government.

Art. 3. These parish curates shall not exact any emolument for marriages, baptisms, burials, or any other religious functions. With respect to fees of ceremony, they may receive such as shall be expressly stipulated in the tariff to be formed for that object, with as little delay as possible, by the reverend bishop of the diocese, and approved by the Supreme Government.

Art. 4. The churches which have hitherto served the different missions, and the sacred vessels, ornaments, and other appurtenances now belonging to them, shall be assigned to those new parishes, and also

## GRANTING OF ISLANDS ON THE COAST OF CALIFORNIA.

*Letter from the minister of the Interior to the Governor of California, respecting the granting of certain islands to Mexican citizens.*

“His excellency, the President, being desirous on the one hand to advance the population of the desert islands adjacent to that department, which form a part of the national territory, and on the other to hinder the many foreign adventurers from benefiting themselves with these considerable portions, whereby they may do great injury to our fisheries, commerce, and other interests, has been pleased to resolve that your Excellency, in conjunction with the departmental junta, shall proceed with activity and prudence to grant and distribute lands on said islands, to the Mexicans who may solicit them, recommending to you in particular the citizens Antonio and Carlos Carrillo, for their useful and patriotic services, in order that you may attend to them in preference, and grant them exclusively one of said islands which they themselves may select.”

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*Extract from an act of the Territorial Deputation of California, 6 August, 1834.*

“Art. 1. The ayuntamientos shall make application, through the usual channels, requesting lands to be assigned to each pueblo for *egidos*, (common lands) and *propios*, (municipal lands.)

“Art. 2. The lands assigned to each pueblo for *propios* shall be subdivided into middling sized and small portions, and may be rented out or sold at public auction, subject to an emphyteutic rent, or tax, (*en senso enfiteutico*,) the present possessors of lands belonging to the *propios* will pay an annual tax, to be imposed by the ayuntamiento, the opinion of three intelligent and honest men being first taken.

“Art. 3. For the grant of a house lot for building on, the parties interested shall pay six dollars and two rials for each lot of one hundred varas square, and in the same manner for a larger or smaller quantity, at the rate of two rials for each vara front.”